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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

LOS ANGELES, CA

WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building,
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Conference Room 8544
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RESERVATIONS: 1–800–726–4995

SAN DIEGO CA

WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building,
880 Front St.
Conference Room 45–13
San Diego, CA
RESERVATIONS: 1–800–726–4995

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, Agriculture.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR part 1421 with respect to the Farmer Owned Reserve (FOR) program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of The Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary in order to implement the changes made to section 110 by the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act). Generally, the amendments made by this rule specify the manner in which wheat and feed grain producers may enter the FOR program and the terms and conditions of the FOR program.

EFFECTIVE DATE: This interim rule shall become effective on January 24, 1991. Comments must be received on or before February 25, 1991, in order to be assured of consideration. Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC, telephone (202) 447–7641.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA) P.O. Box 2415, Washington, DC, telephone (202) 447–8223.

SUPPLEMENTARY INFORMATION: This amendment has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and it has been determined that these program provisions will result in an annual effect on the economy of less than $100 million.

The title and number of the federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this notice applies is Grain reserve—10.067.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the wheat and feed grain Farmer Owned Reserve program that the program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V. published at 48 FR 29115 (June 24, 1983).

Background

Section 110 of the 1949 Act sets forth the statutory authority for the FOR program which was added to the 1949 Act by the Food and Agriculture Act of 1977. The FOR was originally intended to encourage producers to store wheat and feed grains during times of surplus for orderly marketing at a later time. As noted in the Conference Report to the 1990 Act, however, experience has shown that the FOR has not operated in an efficient manner:

> The Managers feel that the FOR has not been operated in an efficient manner in the recent past. The changes made in this section are intended to provide for a more moderate transition of grain into and out of the reserve. The Managers note that the program has, in the past, had the effect of completely isolating the reserve from the market—some wheat from the 1978 crop remains in the reserve at the time this Act is being completed. The Managers intend that the changes made in the Act will allow for a more orderly flow of grain into and out of the FOR. Accordingly, the amendments adopted in the conference substitute become effective December 1, 1990, to govern the administration of the FOR as of that date.

In order to ensure that unreasonably large quantities of grain are not placed in the FOR, the 1990 Act amended section 110 to provide that the maximum quantity of wheat in the FOR cannot exceed 450 million bushels and the maximum quantity of feed grains cannot exceed 900 million bushels; there are no minimum quantities which must be maintained in the FOR. In order to provide flexibility in administering the FOR, the maximum quantity of wheat in the FOR may be established within the range of 300–450 million bushels and the maximum quantity of feed grains within a range of 600–900 million bushels.

Entry into the FOR is triggered based upon price and stocks-to-use ratios. Section 110 provides.

> (2) *Discretionary Entry*—The Secretary may make extended loans available to producers of wheat or feed grains if—
> (A) The Secretary determines that the average market price for wheat or corn, respectively, for the 90-day period prior to the dates specified in paragraph (1) is less than 120 percent of the current loan rate for wheat or corn, respectively;
> (B) As of the appropriate date specified in paragraph (1), the Secretary estimates that the stocks-to-use ratio on the last day of the current marketing year will be—
> (i) In the case of wheat more than 37.5 percent, and
> (ii) In the case of corn more than 22.5 percent.
> (3) *Mandatory Entry*—The Secretary shall make extended loans available to producers of wheat or feed grains if the conditions specified in subparagraphs (A) and (B) of paragraph (2) are met for wheat or feed grains, respectively.

Section 110 provides that the Secretary shall announce the terms and conditions of the FOR by December 15 of the year in which the crop of wheat was harvested and in the case of feed grains, March 15 of the year following the year in which the crop of corn was harvested. Thus, the determination of whether a crop of grain sorghum, oats or barley will be allowed entry into the FOR will also be announced by March 15 of the year following the year in which such crop was harvested.

If entry into the FOR is allowed, as noted in the Conference Report, the terms and conditions of the FOR loans

are designed to allow greater flexibility to producers than was previously allowed under section 110:

> The current statutory restrictions on access to FOR grain severely restrict usefulness of the FOR. The amendments adopted in the Conference substitute will allow producers to gain access to FOR-held grain to encourage producers to redeem grain from the FOR as market conditions and individual marketing plans warrant. The amendments allow all producers to redeem FOR loans at any time without imposition of penalties, as exist in current law. The amendments also provide that once market prices reach 95% of the current established price for the commodity, storage payments will end, and loans extended for FOR grain will begin accruing interest once market prices each [sic] 105% of the established target price for the commodity.

Storage payments will be paid with respect for FOR grain after the fact on a quarterly basis. Section 110 also provides:

> The Secretary shall cease making storage payments whenever the price of wheat or feed grains is equal to or exceeds 95 percent of the then current established price for the commodities, and for any 90-day period immediately following the last day on which the price of wheat or feed grains was equal to or in excess of 95 percent of the then current established price for the commodities.

Although the FOR program was intended to ensure that grain would come out of the FOR when prices were high, producers have shown a reluctance to repay FOR loans. In large part, this is due to the storage payments which they could earn under the FOR and due to special Internal Revenue Code tax provisions which allow producers the option to defer the declaration of the proceeds of CCC price support loans as income until the maturity of the loan. In order to ensure orderly management of the FOR, section 110 provides that (1) producers may, if entry is allowed, only enter the FOR after the maturity of a regular 9-month price support loan; and (2) FOR loans shall be limited to a term of 27 months from the date on which the original 9-month price support loan expired unless, at the discretion of the Secretary, the loan has been extended for one 6-month period. Also, in order to provide for equitable treatment of producers, section 110 provides that the Secretary shall take regional differences in the time of harvest into consideration in administering the FOR.

Section 110 provides that the regulations which are to be used in administering the FOR must be issued not later than 60 days after enactment of the 1990 Act. Accordingly, this interim rule becomes effective upon publication in the **Federal Register**. However, comments are requested and will be taken into consideration in developing the final rule.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 is revised to read as follows:

> **Authority:** 7 U.S.C. 1421, 1423, 1425, and 1445e; 15 U.S.C. 714b and 714c.

2. A new subpart entitled "Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 and Subsequent Crops" is added at §§ 1421.200 through 1421.216 to read as follows:

Subpart—Regulations Governing the Wheat and Feed Grain Farmer-Owned Reserve Program for 1990 and Subsequent Crops

Sec.

Subpart—Regulations Governing the Wheat and Feed Grain Farmer Owned Reserve Program For 1990 and Subsequent Crops

§ 1421.200 Applicability.

(a) Effective for the 1990 and subsequent crops, the regulations in this subpart set forth the terms and conditions for the Wheat and Feed Grain Farmer Owned Reserve (FOR) Program which provides for extended Commodity Credit Corporation (CCC) farm-stored and warehouse-stored loans ("FOR loans") with respect to eligible commodities as provided in § 1421.204.

(b) The regulations set forth in §§ 1421.1 through 1421.100 of this part which are applicable to a crop of wheat or feed grain shall be applicable to FOR loans made with respect to such a crop unless such regulations are inconsistent with the provisions of this subpart in which case the provisions of this subpart shall be applicable.

(c) In order to obtain a FOR loan, a producer must:

(1) Have previously obtained a regular price support loan in accordance with §§ 1421.1 through 1421.100 of this part with respect to the commodity to be pledged as collateral for the FOR loan;

(2) On or before the expiration of such price support loan, make a written request to obtain a FOR loan in the manner prescribed by CCC at the county office which disbursed the regular price support loan.

(d) A cooperative marketing association which has been approved in accordance with part 1425 of this chapter may obtain price support on behalf of the members of such cooperative who are eligible to receive price support with respect to a crop of a commodity. For purposes of this subparagraph, the term "producer" includes such an approved cooperative marketing association.

(e) The level of price support shall be the level specified in the regular price support loan Note and Security Agreement.

§ 1421.201 Program availability.

(a) Producers with a maturing CCC regular price support loan may obtain a FOR loan only when a reserve is in effect and is available for a crop of a commodity. FOR loans will be available when announced by CCC for a specified crop of wheat, corn, grain sorghum, oats, and barley ("feed grains") for such period of time and under such terms and conditions as may be deemed to be appropriate by CCC.

(b) Annually, CCC shall announce whether the FOR program shall be in effect with respect to a crop of wheat or feed grains. Such announcement shall be made by:

(1) For wheat, December 15 of the year in which the crop was harvested; and

(2) For corn, grain sorghum, oats, and barley, March 15 of the year following the year in which the crop was harvested.

(c) The FOR program shall only be in effect for a crop of wheat or feed grains as determined and announced by CCC. CCC may make available FOR loans for a crop of wheat or feed grains if:

(1) CCC has determined that the market price determined in accordance with subsection 1421.209(d) for wheat or corn during the 90 days prior to the announcement specified in subsection (b) of this section is less than 120

percent of the national average price support level which is applicable to such crop; or

(2) CCC estimates that the stocks-to-use ratio on the last day of the current marketing year will be:

(i) For wheat, more that 37.5 percent; and

(ii) For corn, more that 22.5 percent.

(d) If neither condition specified in paragraph (c)(1) or (2) of this section exists with respect to a crop of wheat or corn, FOR loans shall not be available with respect to such crop of wheat or feed grains.

(e) If both conditions specified in paragraph (c) of this section exist with respect to a crop of wheat or corn, FOR loans shall be available to producers of such crop of wheat or feed grain unless CCC estimates that a sufficient quantity of grain is already in the FOR program as determined in accordance with § 1421.203 and announced in accordance with paragraph (b) of this section.

(f) FOR loans will not be available if the Secretary has determined that emergency conditions exist and FOR loans had been called in accordance with the provisions of § 1421.211(b).

§ 1421.202 Length of reserve agreements.

The length of a FOR loan shall be 27 months from the maturity date of the regular price support loan. The day following the maturity date of the regular price support loan shall be the effective date of the FOR loan agreement. In order to assure that producers throughout the United States are treated in a fair and equitable manner, CCC may allow extensions of regular price support loans for corn, grain sorghum, oats, and barley which expire in or before the month following the month of the date specified in § 1421.201(b)(2). The terms and conditions of such extension shall be provided through actual notice to affected producers. FOR agreements may be extended by CCC, at CCC's sole discretion, at maturity for an additional six months.

§ 1421.203 Reserve quantity.

The maximum quantity of wheat and feed grains stored under the FOR program shall be determined and announced annually by CCC. Such limitation shall be announced by the date specified in § 1421.201(b). In order to assure that such quantities are not exceeded and to ensure regional equity, producers shall file with CCC a Form CCC-906A which includes a statement of the quantity of grain which is pledged as collateral for a regular price support loan which such eligible producers intend to place in the FOR loan program. Such forms must be filed with the county office which disbursed such regular price support loan. If the total quantities specified on such form show that the quantity intended by such producers will likely exceed the maximum quantity, CCC may apply a uniform factor to the quantity producers intend to place in the FOR so that the maximum quantity is not exceeded. If such a form is required, producers who fail to file such form with respect to a commodity that would otherwise be eligible for entry into the FOR loan program, such grain shall not be eligible for FOR loan entry. All Form CCC-906A's must be filed by a producer:

(a) For wheat, January 31 of the year following the year in which the crop was harvested, and

(b) For corn, grain sorghum, barley, and oats, April 30 of the year following the year in which the crop was harvested.

§ 1421.204 Producer eligibility requirements.

Whenever CCC has announced pursuant to § 1421.201 that FOR loans are available for a crop of wheat or feed grains, a producer may, upon maturity of a regular price support loan, pledge the eligible commodity serving as collateral for such loan as the collateral for a FOR loan by making application for and completing a FOR loan agreement.

§ 1421.205 Quantity eligible for grain reserve loans.

(a) Farm-stored FOR loans shall be disbursed on a quantity not to exceed the lesser of:

(1) The measured quantity of the eligible commodity stored in approved farm storage pursuant to a regular price support loan; or

(2) The quantity upon which the disbursement of the regular price support loan was based. All of the commodity in a bin or lot shall be pledged as collateral for a farm stored FOR loan although such loan is made with respect to only a portion of such quantity.

(b) Warehouse-stored FOR loans, shall be disbursed on a quantity not to exceed the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular price support loan.

(c) Notwithstanding paragraphs (a) and (b) of this section, the quantity of a commodity which is used to determine the amount of a FOR loan shall not exceed the quantity determined by application of the factor determined and announced in accordance with § 1421.203.

§ 1421.206 Quality eligibility requirements of FOR loans.

(a) The quality of grain pledged as collateral for FOR loans shall be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture.

(b) Grain which is pledged as collateral for a FOR loan must meet the quality eligibility requirements for securing a regular price support loan, except grain which grades "sample grade" as defined in the Official United States Standards for Grain may not be pledged as collateral for a FOR loan. In addition, corn pledged as collateral for a FOR loan must be shelled corn.

(c)(1) Prior to approval of a farm-stored FOR loan, the commodity will be inspected at the producer's expense by a representative of CCC and the FOR loan agreement will not be approved unless it is determined by CCC on the basis of such inspection that:

(i) The commodity is such that it can reasonably be expected to be stored with safety until maturity of the FOR loan; and

(ii) The commodity meets the quality eligibility requirements in accordance with paragraphs (a) and (b) of this section. If such representative is unable to make a determination with respect to the eligibility of the commodity, a sample of the commodity shall be drawn and submitted to FGIS for quality analysis.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored grain pledged as collateral for a FOR loan. Farm-stored grain which is delivered to CCC must meet the quality eligibility requirements specified in paragraphs (a) and (b) of this section. CCC may reject the delivery of farm-stored grain which does not meet the quality eligibility requirements, in which case the producer shall repay to CCC the principal amount of the FOR loan and other charges plus interest from the disbursement of such amount. If CCC accepts the delivery of such ineligible commodity, the producer shall repay to CCC the principal amount of the FOR loan and other charges plus interest from the disbursement date of such amount less the settlement value of the commodity as determined in accordance with the regulations set forth in § 1421.22.

§ 1421.207 Storage rates.

(a) Producers will be paid for the storage of FOR loan quantity at the rate specified by CCC at the time of the announcement of the availability of FOR

loans as specified in § 1421.201. Such rates shall be specified in the FOR loan agreement executed by CCC and the producer.

(b) (1) Storage payments shall be paid quarterly, starting from the effective date of the FOR loan. Such payments shall be paid within 30 days after the end of each quarter in which such payments are earned. Storage payments shall not be made when the grain which was pledged as collateral for the FOR loan is not in storage. Storage payments shall not be earned when the 5-day adjusted market price determined in accordance with § 1421.209(e) equals or exceeds 95 percent of the current year's established price for the commodity. In such instance, no storage payments shall be earned from the day the 5-day adjusted market price was equal to or exceeded 95 percent of such established price through the ninetieth day following the last day on which the 5-day adjusted market price equalled or exceeded 95 percent of such established price.

(2) For a warehouse-stored FOR loan:

(i) A FOR agreement shall not be approved until the producer provides written evidence to CCC that at least the next year's storage has been paid to the warehouse or arrangements for the payment of such storage have been made with the warehouse on the FOR loan quanity.

(ii) The fourth quarterly storage payment shall not be made until the producer provides written evidence to CCC that at least the next year's storage has been paid to the warehouse or arrangements for the payment of such storage have been made with the warehouse on the FOR loan quantity.

(iii) The eighth quarterly storage payment, shall not be made until the producer provides written evidence to CCC that storage has been paid to the warehouse or arrangements for the payment of such storage have been made with the warehouse on the FOR quantity through the FOR loan maturity date.

(iv) If the producer fails to provide such written evidence within a reasonable time, as determined by CCC, CCC shall call such loan. If, within 15 days after the date such loan is called, the loan is not repaid or evidence is not furnished to CCC that such storage has been paid or that arrangements for such storage have been made, the producer shall be considered to have voluntarily forfeited the loan collateral to CCC and title to the commodity shall vest in CCC on the sixteenth day without any futher action by the producer.

(c) Storage payments for farm-stored FOR loans shall be based upon the measured FOR loan quantity of such commodity.

(d) No storage payment shall be earned if the producer:

(1) Has made any false representation in the loan documents in obtaining the regular price support loan or the FOR loan or in settlement of the FOR loan;

(2) Makes an unauthorized disposition of the commodity as determined in accordance with § 1421.214.

(3) Abandons the commodity; or

(4) Negligently or otherwise impairs the commodity.

§ 1421.208 Charging interest.

FOR loans shall not accrue interest unless CCC determines that the 5-day adjusted market price determined in accordance with § 1421.209(e) for the commodity is equal to or exceeds 105 percent of the current year's established price for such commodity. In such instance, interest shall accrue from the day the 5-day adjusted market price was equal to or exceeded 105 percent of such established price and continue to accrue for the balance of the month following the last day on which the 5-day adjusted market price equaled or exceeded 105 percent of such established price through the two succeeding months. The rate of interest which shall be applicable to a FOR loan during an interest an interest-accruing period shall be the rate applicable to the regular price support loan as determined in accordance with part 1405 of this chapter.

§ 1421.209 Determination of market price.

For purposes of §§ 1421.207 and 1421.208, the market price shall be determined and announced by CCC based on price data published by the Agricultural Marketing Service (AMS) and the National Agricultural Statistics Service (NASS).

(a) In general, the market price for wheat, corn, grain sorghum, barley, and oats will be determined daily using prices from selected major markets published by AMS, adjusted to reflect prices received by producers published by NASS. The average of the AMS price series is referred to as the "daily major market price."

(b) The adjustment, which will be determined by CCC monthly, will be calculated as the difference between:

(1) The mid-month price for the previous month for the respective commodity published by NASS, and

(2) The mid-month price for the previous month for selected major markets for the respective commodity published by AMS.

(c) The major markets are:

(1) For wheat:

(i) Kansas City, MO, number 1, hard red winter wheat with ordinary protein,

(ii) Minneapolis, MN, number 1, dark northern spring wheat with 14 percent protein,

(iii) Minneapolis, MN, number 1, hard amber durum (milling) wheat,

(iv) Portland, OR, number 1, white wheat with ordinary protein, and

(v) St. Louis, MO, number 2, soft red winter wheat.

(2) For corn, number 2 yellow corn in Kansas City and St. Louis, MO, Omaha, NE, and Minneapolis, MN.

(3) For grain sorghum, number 1 yellow grain sorghum in the Texas High Plains and Kansas City, MO.

(4) For barley, number 2 feed barley in Minneapolis, MN.

(5) For oats, number 2 heavy white oats in Chicago, IL and Minneapolis, MN.

(d) For the purposes of § 1421.201, the daily major market price for wheat will be calculated by averaging the five major markets in proportion to the quantity by each class of production based on the latest class information published by NASS.

(1) In determining the market price for FOR entry for wheat, the market price will be, to the extent practicable, the simple average of the 5-day average price for the 90 days preceding the announcement date.

(2) In determining the market price for FOR entry for corn, grain sorghum, barley, and oats, the market price will be, to the extent practicable, the simple average of the 5-day corn price for the 90 days preceding the announcement date.

(3) Such price series is referred to as the "90-day adjusted market price for determining FOR entry."

(e) For the purposes of §§ 1421.207 and 1421.208, the daily major market price for wheat will be calculated by averaging the five major markets in proportion to the outstanding quantity in the FOR loan program by each class as determined by CCC using FOR loan class information as it becomes available.

(1) The market price for determining storage payment earnings and interest accrual will be a simple average of the 5-day average price.

(2) Such price series is referred to as the "5-day adjusted market price for determining storage payment earnings and interest accrual."

§ 1421.210 Commingling and replacement of wheat and feed grains.

(a) In the case of farm stored FOR loans, grain pledged as collateral for a FOR loan may be commingled with

other eligible or ineligible grain which is from the same or any other crop year or from the same or any other farm and which is of the same class if:

(1) CCC gives prior written approval of such commingling, and

(2) A representative of CCC inspects and measures the grain at the producer's expense prior to commingling.

(b)(1) A producer may replace existing farm-stored FOR loan collateral only as provided in this paragraph and paragraph (c) of this section. Warehouse-stored FOR loan collateral may not be replaced. The producer must file a request for approval to replace farm-stored collateral with the county office which disbursed the loan by completing Form CCC–687–1 or CCC–681. No request may be approved prior to the date established for each county by the State committee. Replacement stocks must be in place within 60 days of the date the request to replace is approved by the county committee.

(2) Grain which is used to replace existing FOR loan collateral must have been produced by the producer and be eligible to be pledged as collateral for a regular price support loan except that compliance with the terms and conditions of any commodity program conducted in accordance with part 1413 of this title on the farm on which such replacement grain was produced is not required. Replacement loan collateral must be grain from the crop which is harvested after the date established by the State committee in accordance with paragraph (b)(1) of this section. This grain must not have been purchased and must previously not have been pledged as collateral for a CCC price support loan. With respect to wheat, such replacement grain must be of the same class as the regular price support loan collateral.

(3) Producers who request to replace existing FOR loan collateral with new grain must have the replacement grain in CCC-approved farm storage within the approved 60 day period. A producer may only have replacement grain in place after this date if the producer notifies the county committee prior to this date of the producer's inability to harvest such grain and the county committee, with the concurrence of a representative of the State committee, determines that:

(i) The producer has made a good faith effort to harvest such replacement grain; and

(ii) The producer is unable to harvest such eligible grain due to adverse weather conditions, or other similar conditions beyond the control of the producer, as determined by CCC.

(4) To protect the interest of CCC in the quantity of collateral to be released for replacement, the county committee may require producers to remit payments to the CCC before a request to replace FOR loan collateral is approved. In such cases, the amount to be remitted shall be the smaller of:

(i) The sum of the principal amount of the FOR loan and other charges plus interest from the disbursement date of such amount; or

(ii) The product of the market price available in the county office on the date that the replacement request was made, times the quantity to be replaced.

(5) A producer who does not have replacement grain in place by the date specified in paragraph (b)(3) of this section and does not meet the conditions specified in such paragraph shall pay to CCC an amount equal to the sum of:

(i) The principal amount of the FOR loan and other charges plus interest from the disbursement date of such amount.

(ii) Storage payments made in accordance with the loan from the date the request for replacement was approved for CCC to the disbursement date of such payments specified in paragraph (b)(5) of this section;

(iii) Interest on storage payments in accordance with paragraph (b)(5)(ii) of this section from the date such payment was made to the date of repayment; and

(iv) Liquidated damages computed on the principal amount for the quantity not replaced at the rate of 6.5 percent from the date the request for replacement was approved for CCC to the date of repayment.

(c)(1) A producer who files a Form CCC–687–1 or CCC–681 requesting the approval to replace existing FOR loan collateral with new grain may after approval of the request:

(i) Feed the grain to the producer's own livestock;

(ii) Deliver the grain to a CCC-approved warehouse; or

(iii) Sell the grain.

(2) A producer who delivers grain to a CCC-approved warehouse in accordance with paragraph (c)(1) of this section shall cause to be delivered to CCC a warehouse receipt issued in the name of CCC with respect to such grain. The warehouse receipt shall show that storage charges have been paid or otherwise provided for through the final date specified to complete the replacement. CCC shall retain control of the receipt until the producer has replaced the original FOR loan collateral with eligible replacement grain. Except as provided in paragraph (b)(3) of this section, if the producer fails to replace the grain within the approved replacement period CCC shall take title to the warehouse receipt without any further action by the producer and shall determine the value of the grain represented by the receipt. This value shall be determined in accordance with § 1421.22 of this part and shall be credited to the amount owed by the producer as determined in accordance with paragraph (b)(5) of this section.

(3) A producer who, in accordance with paragraph (c)(1) of this section, sells the grain which is the collateral for the FOR loan shall only sell such grain to the person specified in the Form CCC–681. To protect the interest of CCC in the quantity of collateral to be released for replacement, the county committee may require the purchaser to make and remit to CCC a check for the full amount of the purchase. In such instances, CCC shall make these funds available to the producer upon the replacement of the original FOR loan collateral with eligible replacement grain if such replacement occurs prior to the final date of the approved replacement period. Except as provided in paragraph (b)(3) of this section, if the producer fails to replace the grain by this date, the producer shall forfeit the sales proceeds to CCC without any further action by the producer. Such sales proceeds shall be credited to the amount owed by the producer as determined in accordance with paragraph (b)(5) of this section.

(4) A producer who, in accordance with paragraph (c)(1) of this section, intends to feed such grain to the producer's own livestock, may only feed the quantity of grain which was approved by the county committee for such purposes.

(5) Any producer who files a Form CCC–687–1 or CCC–681 with the county committee shall not remove the existing FOR loan collateral until written approval has been made by the county committee. The producer shall allow a representative of the county committee to inspect and measure, at the producer's expense, the quantity of grain to be removed and the growing crop which will be used as replacement stocks upon harvest.

§ 1421.211 Redemption requirements and emergency call.

(a) A producer may redeem the commodity pledged as collateral for a FOR loan at any time by repaying the principal amount of the FOR loan and other charges plus interest as provided in this part.

(b) Notwithstanding any other provision of this part, the Secretary may

require producers to repay FOR loans prior to the maturity date of such loans if the Secretary determines that emergency conditons exist which require that the commodity which is serving as collateral for the FOR loan be made available in the market to meet urgent domestic or international needs and such determination and the reasons therefore are reported to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives at least fourteen days before taking such action. Repayment shall consist of the principal amount of the FOR loan and other charges plus interest. If the called loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity without any further action by the producer.

§ 1421.212 Reconcentration.

CCC may, with the concurrence of the producer, reconcentrate all FOR loan collateral which is stored in commercial warehouses at such points as CCC considers to be in the public interest, taking into account such factors as transportation and normal marketing patterns.

§ 1421.213 Maturity.

(a) Unless extended by CCC as provided in § 1421.202, FOR loans mature and are due and payable on the last day of the twenty-seventh calendar month after the maturity date of the regular price support loan.

(b) If a producer does not pay to CCC the total amount due and payable in accordance with the regular price support Note and Security Agreement and the FOR loan agreement, the following sections of this part shall apply:

(1) The loan may be liquidated by CCC in accordance with § 1421.19;

(2) The settlement value determined by CCC to settle the loan shall be determined by CCC in accordance with § 1421.22; and

(3) If it becomes necessary for CCC to foreclose on the loan collateral, such foreclosure shall be conducted by CCC in accordance with § 1421.23.

§ 1421.214 Unauthorized removal and unauthorized disposition.

(a) Producers obtaining a FOR loan shall agree not to move or dispose of the collateral pledged as security for such FOR loan without obtaining prior written approval for such action from the county committee in accordance with § 1421.20 of this part. In addition to the regulations in § 1421.17, if there are any liens of encumbrances on the commodity, waivers that full protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds and no additional liens or encumbrances shall be placed on the commodity. If such waivers cannot be obtained, CCC shall call the loan.

(b) Unauthorized removal is the movement of any loan collateral from the storage structure in which the grain was stored with the FOR loan was approved to any other storage structure which may or may not be located on the producer's farm without prior written consent from the county committee in accordance with § 1421.20. In such cases, the regulations concerning penalties in § 1421.17 shall be applicable.

(c) Unauthorized disposition is the conversion of collateral under FOR loan including feeding of such collateral without prior written consent from the county committee in accordance with § 1421.20. In such cases, the regulations concerning penalties in § 1421.17 shall be applicable.

§ 1421.215 Loss or damage to the commodity.

The producer is responsible for any and all loss in quality or quantity of the collateral pledged for a FOR loan. CCC shall not assume any loss.

§ 1421.216 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget is accordance with 44 U.S.C. chapter 35 and OMB number will be assigned.

Signed this 16th day of 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–1518 Filed 1–23–91; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1700

Interpretation of Guaranteed Loan Policy

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule, technical amendment.

SUMMARY: The Rural Electrification Administration (REA) is publishing this interpretation to clarify that any eligible electric borrower, including a distribution borrower, may request a guaranteed loan submitted pursuant to section 306 of the Rural Electrification Act, as amended (RE Act) for any RE Act purpose. The REA is issuing this interpretation of 7 CFR Part 1700, General Information, Subpart B, Programs, § 1700.23, Guaranteed loans pursuant to section 306 of the Rural Electrification Act, as amended, to make clear that REA will consider on a case-by-case basis any borrower's request for a guaranteed loan under section 306 of the RE Act for any purpose authorized pursuant to the RE Act, including distribution and sub-transmission purposes. Any rights a borrower may have under the current insured loan program will not be affected by this interpretation.

EFFECTIVE DATE: This rule is effective January 24, 1991.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4037–S, 14th and Independence Avenue SW., Washington, DC 20250–1500, telephone (202) 382–9547.

SUPPLEMENTARY INFORMATION: Nothing herein will deprive a borrower of any other rights it may have under current insured loan policy and procedures. This technical amendment adds, "* * * including without limitation, distribution, sub-transmission, bulk transmission and generation facilities" at the end of the first sentence of 7 CFR 1700.23, and thereby clarifies that REA will consider providing financing by a loan guarantee for any RE Act purposes under section 306, including distribution and sub-transmission. Those borrowers with an insured application on file with REA may revise their application by submitting a new board resolution to also request Federal Financing Bank (FFB) guaranteed financing, and by identifying those facilities to be financed under section 306.

Need for Rulemaking

The guaranteed loan program came into existence with the 1973 amendments to the RE Act. On January 8, 1974, at 39 FR 1352, REA published 7 CFR 1700.3(c), which was, on September 28, 1990, redesignated at 55 FR 39396 to 7 CFR 1700.23, Guaranteed loans pursuant to section 306 of the Rural Electrification Act, as amended.

While section 306 permitted guaranteed loans to be made to any eligible borrower for any Act purpose, including distribution and sub-transmission purposes, REA Bulletin 20–22, Guarantee of Loans for Bulk Power

Supply Facilities, and REA Bulletin 20–2, Electric Loan Policies and Application Procedures, which are the relevant REA bulletins, addressed only guaranteed loans for bulk power supply facilities.

Also while REA Bulletin 20–14, Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act, did not preclude borrowers from using guaranteed funds for RE Act purposes, it contemplated that borrowers would utilize insured loans for distribution and sub-transmission purposes.

This clarification is required because the current demand for insured loans substantially exceeds the lending authority available to REA. Consequently, a large backlog of applications has accumulated. Several distribution borrowers having applications pending or planning to submit applications have expressed an interest in a guaranteed FFB loan to meet at least part of their loan needs. They have requested this clarification from REA. These borrowers indicate that the availability of money on a timely basis is more important than any difference in cost of money.

Conclusion

This action is an interpretive rule and clarification of an existing rule which does not impose additional burden or requirements on the public. Therefore, no period for public comment is necessary pursuant to provisions of the Administrative Procedure Act.

List of Subjects in 7 CFR Part 1700

Electric power, Freedom of information, Loan programs—communications, Loan programs—energy, Organization and function (Government agencies), Rural areas.

Accordingly, the Rural Electrification Administration amends 7 CFR part 1700 to read as follows:

1. The authority citation for part 1700 is revised to read as follows:

Authority: 7 U.S.C. 901–950(b); Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72; 7 U.S.C. 1921 *et seq.*, and 44 FR 30313, May 25, 1979; 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

2. Section 1700.23 is revised to read as follows:

§ 1700.23 Guaranteed loans pursuant to section 306 of the Rural Electrification Act, as amended.

These loans are made by any legally organized lending agency and guaranteed in the full amount thereof by the Administrator for purposes provided in the RE Act, including without limitation, distribution, sub-transmission, bulk transmission and generation facilities. The loans guaranteed under this section are serviced by the lender except that loans made by the Federal Financing Bank are serviced by REA. The interest rate on these loans is as agreed upon by the borrower and the lender.

Dated: January 16, 1991.

George E. Pratt,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 91–1566 Filed 1–23–91; 8:45 am]

BILLING CODE 3410–15–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 601, 602, 603, 604, 606, 611, 612, 614, 615, 617, 618, 619, and 621

RIN: 3052–AB17

Miscellaneous Technical Changes

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts as final regulations, technical amendments to certain regulations relating to the organization, authorities, and responsibilities of the Farm Credit System (System) institutions and the Farm Credit Administration (FCA). The regulations reflect amendments to the Farm Credit Act of 1971, as amended, (1971 Act), made by the Farm Credit Act Amendments of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509 (1986 Amendments), and the Agricultural Credit Act of 1987, Public Law 100–233 (1987 Act), and contain various other technical corrections.

EFFECTIVE DATE: These regulations shall become effective on the expiration of 30 days after this publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Patricia W. DiMuzio, Manager, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Rebecca S. Orlich, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The 1986 Amendments to the 1971 Act terminated FCA approval of interest rates charged by System institutions on direct and discounted loans. The 1987 Act amended a number of sections of the 1971 Act relating to the organization and operation of the System and the FCA. Among other things, the 1987 Act created the Farm Credit Banks (FCBs) through the merger of the Federal intermediate credit bank (FICB) and Federal land bank (FLB) in each district except the Jackson District; dissolved the Farm Credit System Capital Corporation and established the Farm Credit System Assistance Board (Assistance Board) and the Farm Credit System Financial Assistance Corporation (FAC); established the Farm Credit System Insurance Corporation (FCSIC); established the Federal Farm Credit Banks Funding Corporation (Funding Corporation) to perform duties formerly performed by the Joint Finance Committee; authorized the mergers of Federal land bank associations (FLBAs) and production credit associations (PCAs) to form agricultural credit associations (ACAs); authorized the transfer of long-term real estate lending authority from an FCB to an FLBA, resulting in a Federal land credit association (FLCA); authorized the merger of FCBs with banks for cooperatives (BCs) to form Agricultural Credit Banks (ACBs); and provided for the voluntary mergers of the banks for cooperatives.

The amendments contained in these regulations, which are described in detail below, relate to (1) revisions necessary to reflect statutory changes made to the 1971 Act in 1986 and 1987 or other regulatory changes; (2) revisions which are technical and typographical corrections; and (3) revisions which reflect changes in the FCA internal organization.

In acting on the regulations, the Board determined that notice and public comments are unnecessary and contrary to the public interest. Section 553(b)(A) of title 5 of the United States Code provides that the notice and comment requirements do not apply to rules of agency organization, procedure, or practice; thus, no notice is required for regulations relating to the FCA internal organization. In addition, 5 U.S.C. 553(b)(B) provides that notice and comment requirements do not apply when the agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest. Because the amendments other than those that relate to agency organization are not substantive changes to the regulations, involving only amendments to conform

to statutory changes or technical and typographical corrections, the Board finds that notice and public comment are unnecessary and contrary to the public interest. Therefore, the Board finds for good cause that public participation in the promulgation of these regulations is not required, and these regulations are hereby published in final form.

Revisions necessary to reflect statutory changes made by the 1986 Amendments, the 1987 Act or other regulatory changes include the following:

(1) Substitution of "Farm Credit Bank" for "Federal land bank" and "Federal intermediate credit bank" throughout the regulations to reflect the mergers of the FLBs and the FICBs. The FCA notes that these name substitutions have no substantive effect on the regulation of the FICB of Jackson, the sole remaining FICB. (See, in this connection, *First South Production Credit Association* v. *Farm Credit Administration*, 729 F. Supp. 1559 (E.D. Va. 1990), appeal docketed, No. 90-2658 (4th Cir. Mar. 30, 1990).) The FCA regulations shall apply to the FICB of Jackson to the same extent the regulations have applied previously.

(2) Inclusion of "Federal land credit association" and "agricultural credit association" in regulations pertaining to associations where appropriate.

(3) Deletion of the reference to the "Farm Credit System Capital Corporation" throughout the regulations, and where appropriate, the addition of the "Farm Credit System Assistance Board" and the "Farm Credit System Financial Assistance Corporation". As noted above, the Farm Credit System Capital Corporation was dissolved pursuant to the 1987 Act.

(4) Deletion of all of § 614.4310 and part of § 614.4640, which set limitations on interest rates. These provisions are obsolete in view of the 1986 Amendments to the 1971 Act which deleted the requirement that the FCA approve interest rates charged borrowers whose loans are purchased, discounted, or accepted by banks when the annual interest on such loans exceeded by more than 1½ percent the discount rate of the bank.

(5) Deletion of § 615.5103, which pertains to the development of debt maturity programs by the Finance Committee. This regulation was made redundant and obsolete by the amendments to § 615.5102 published at 54 FR 1160, January 12, 1989. Pursuant to the 1987 Act, the Finance Committee was abolished and its responsibilities were transferred to the Funding Corporation

(6) Deletion of the last clause of the definition of "service organization" in § 612.2130(p) due to the repeal of the referenced § 5.6(a) of the 1971 Act by the 1987 Act.

(7) Addition of the "Funding Corporation" in each referenced section where "service organization" or "service corporation" is listed, to reflect that the Funding Corporation was given separate statutory existence as an institution of the System by Congress in the 1987 Act. The Funding Corporation had existed previously as a service corporation chartered by the FCA. This statutory change had no effect on the applicability of existing regulations to the Funding Corporation. In addition, the "Funding Corporation" is added to the definition of "Farm Credit institutions" in § 619.9146. When that definition was restated in amendments to part 619 in 1990, 55 FR 24861 (June 19, 1990), the Board intended to include the same entities that had been listed in the prior definition, formerly at § 619.9135. However, the restated definition failed to reflect the change in the Funding Corporation's status. The addition of the "Funding Corporation" to the definition of "Farm Credit institutions" restores that definition to its previous meaning.

(8) Substitution of "National Bank for Cooperatives" or "bank for cooperatives," as appropriate, for "Central Bank for Cooperatives" throughout the regulations.

Revisions which are technical or typographical corrections include the following:

(1) Removal of paragraphs (b) (1) and (2) from § 611.1122. They were removed by amendments adopted by the Board on August 5, 1986, and published in the **Federal Register** on September 12, 1986 (51 FR 32441), but were not removed from the text of the regulation in the Code of Federal Regulations as published by the Office of the **Federal Register.**

(2) Addition of the word "regulation" in the fourth sentence of paragraph (a). It was published incorrectly in final form at 51 FR 41945, November 20, 1986.

(3) Substitution of "paragraph (d)(1)" for "paragraph (b)(1)" in § 615.5250(d)(2). The section reference was published incorrectly in final form at 53 FR 40047 on October 13, 1988.

(4) Deletion of the duplicative introductory paragraph and paragraphs (d) through (h) in § 618.8360.

(5) Elimination of gender-based designations in § 617.7150(b).

(6) Deletions or substitution of references to regulations or statutes whose numbers or citations have changed.

Revisions which reflect changes in the FCA organization include the following:

(1) Addition of the Office of Inspector General to the FCA organizational structure.

(2) Revisions of descriptions of offices within FCA to reflect recent reorganization.

List of Subjects in 12 CFR Parts 600, 601, 602, 603, 604, 606, 611, 612, 614, 615, 617, 618, 619, and 621

Accounting Agriculture, Archives and records, Banks, banking, Blind, Civil rights, Conflict of interests, Courts, Credit, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Foreign trade, Freedom of information, Government employees, Government securities, Handicapped, Insurance, Investigations, Investments, Nondiscrimination, Organization and functions (Government agencies), Physically handicapped, Privacy, Reporting and recordkeeping requirements, Rural areas, Sunshine Act, Technical assistance.

As stated in the preamble, parts 600, 601, 602, 603, 604, 606, 611, 612, 614, 615, 617, 618, 619, and 621 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 600—ORGANIZATION AND FUNCTIONS

1. The authority citation for part 600 continues to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

Subpart A—Farm Credit Administration

§ 600.1 [Amended]

2. Section 600.1 is amended by adding the words "; Public Law 100-399, August 17, 1988; Public Law 100-460, October 1, 1988; Public Law 101-73, August 9, 1989; Public Law 101-220, December 12, 1989; Public Law 101-624, November 28, 1990" at the end of the third sentence.

3. Section 600.5 is amended by revising paragraphs (b)(1), (b)(2), (b)(3), and (b)(6) to read as follows:

§ 600.5 Organization of the Farm Credit Administration.

* * * * *

(b) *Offices and Functions*—(1) *Office of Examination.* The Office of Examination plans and conducts examinations of the Farm Credit System institutions and other institutions as required by law, prepares and issues reports of examination summarizing examination findings, and recommends corrective action as appropriate. The

Office of Examination recommends formal administrative action to correct deficiencies when institutions are found to be operating in an unsafe or unsound manner or are in violation of law or regulation. The Office Director prepares examination schedules for approval by the Board and advises the Board on matters affecting policy, regulation, and legislation relating to examination activities. The Director, Office of Examination, is the Chief Examiner of the Farm Credit Administration. The Office of Examination issues, or recommends that the Board issue, prudential lending and operating standards for Farm Credit System institutions, and takes actions, or recommends that the Board take actions, relating to changes in System charters and other activities of the institutions as required by law or regulation. The Office of Examination collects financial data from System institutions and conducts ongoing financial and economic analyses.

(2) *Office of Regulatory Enforcement.* The Office of Regulatory Enforcement is responsible for the agency's supervision and enforcement activities for all Farm Credit System institutions requiring more than normal attention. The Office of Regulatory Enforcement recommends to the Board and, upon its approval, exercises statutory enforcement powers where unsafe and unsound System practices are found or where the rules, regulations, or orders of the Board are violated. In addition, the Office of Regulatory Enforcement supervises the operations of receivers and conservators of Farm Credit institutions and provides support services for the operations of the Farm Credit System Insurance Corporation.

(3) *Office of Resources Management.* The Office of Resources Management provides agency administrative management for the agency budget, accounting, human resources, equal opportunity programs, training, procurement, electronic data processing, document processing, property, supply, facilities, records and other administrative services.

* * * * *

(6) *Office of Inspector General.* The Office of Inspector General is an independent office established by the Inspector General Act Amendments of 1988 to:

(i) Conduct and supervise audits and investigations relating to the programs and operations of the Farm Credit Administration;

(ii) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of the Farm Credit Administration's programs and operations;

(iii) Prevent and detect fraud and abuse in the Farm Credit Administration's programs and operations; and

(iv) Provide a means to keep the Chairman and Congress fully and currently informed about problems and deficiencies relating to the Farm Credit Administration's programs and operations and the necessity for, and progress of, corrective actions.

* * * * *

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

4. The authority citation for part 601 is revised to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

§ 601.101 [Amended]

5. Section 601.101 is amended by removing the words "Office of Administration" and adding in their place, the words "Office of Resources Management" in paragraphs (a) introductory text and (b).

§ 601.141 [Amended]

6. Section 601.141 is amended by removing the words "district Farm Credit board or the board of the Central Bank for Cooperatives" in the first sentence and adding in their place, "Farm Credit bank board".

PART 602—RELEASING INFORMATION

Subpart A—Information and Records Generally

7. The authority citation for part 602 is revised to read as follows and all other authority citations throughout part 602 are removed.

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252; 5 U.S.C. 552, E.O. 12600, 52 FR 23781, 3 CFR 1987, p. 235.

§ 602.220 [Amended]

8. Section 602.220 is amended by removing the words "a Federal land bank association or a production credit association" and adding in their place, the words "an association" and removing the words "Federal land bank or Federal intermediate credit bank" and adding in their place, the words "Farm Credit Bank" in the third sentence.

Subpart B—Availability of Records of the Farm Credit Administration

§ 602.250 [Amended]

9. Section 602.250 is amended by removing the words "or the Capital Corporation" and adding in their place, the words "the Funding Corporation, the Farm Credit System Assistance Board, or the Farm Credit System Financial Assistance Corporation" in paragraph (a)(5).

PART 603—PRIVACY ACT REGULATIONS

10. The authority citation for part 603 is revised to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

§ 603.340 [Amended]

11. Section 603.340 is amended by removing the words "Office of Administration" and adding in their place, the words "Office of Resources Management" in paragraphs (a) and (b).

12. Section 603.355 is revised to read as follows:

§ 603.355 Specific exemptions.

Pursuant to 5 U.S.C. 552a(k)(2), the investigatory material compiled for law enforcement purposes in the following systems of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a and from the provisions of this part:

Farm Credit Bank loans—FCA.
Production Credit Association loans—FCA.
Agricultural Credit Association loans—FCA.
Federal Land Credit Association loans—FCA.
Agricultural Credit Bank loans—FCA.

PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

13. The authority citation for part 604 is revised to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

§ 604.420 [Amended]

14. Section 604.420 is amended by removing the words "or the Capital Corporation" and adding in their place, the words "the Funding Corporation, the Farm Credit System Assistance Board, or the Farm Credit System Financial Assistance Corporation" in paragraph (i)(1).

§ 604.435 [Amended]

15. Section 604.435 is amended by removing the words "Office of Administration" and adding in their

place, the words "Office of Resources Management" in paragraph (e).

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION

16. The authority citation for part 606 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 606.670 [Amended]

17. Section 606.670 is amended by removing the words "Office of Administration" and adding in their place, the words "Office of Resources Management" in paragraph (c).

PART 611—ORGANIZATION

18. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

§ 611.1122 [Amended]

19. Section 611.1122 is amended by removing paragraphs (b)(1) and (b)(2).

Subpart I—Service Organizations

§ 611.1135 [Amended]

20. Section 611.1135 is amended by adding the word "regulation" in the fourth sentence immediately preceding the word "by" in paragraph (a).

PART 612—PERSONNEL ADMINISTRATION

21. The authority citation for part 612 is revised to read as follows:

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

Subpart B—Standards of Conduct for Directors, Officers, and Employees

22. Section 612.2130 is amended by revising paragraphs (l), (p), and (t) to read as follows:

§ 612.2130 Definitions.

* * * * *

(l) *OFI* means other financing institutions which have established an access relationship with a Farm Credit Bank under § 1.7(b)(1)(B) of the Act.

* * * * *

(p) *Service organization* means each service organization authorized by § 4.25 of the Act, and each unincorporated service organization formed by one or more Farm Credit institutions.

* * * * *

(t) *System institution* and *institution means* any bank, association, or service organization in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, Agriculture Credit Banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Funding Corporation, and service organizations.

§ 612.2150 [Amended]

23. Section 612.2150 is amended by removing the words "Federal land bank, Federal intermediate credit bank," and adding in their place, the words "Farm Credit Bank" in the third sentence of paragraph (b)(6); and by removing the words "Capital Corporation," and adding in their place, the words "Funding Corporation" in paragraph (c) introductory text.

§ 612.2160 [Amended]

24. Section 612.2160 is amended by removing the words "district board, the board of the Central Bank for Cooperatives" and adding in their place, the words "bank board, the board of the Funding Corporation" in the first sentence of paragraph (a); by adding the words", Funding Corporation," after the word "Bank" in paragraph (b); and by removing the words "and service organization" and adding in their place, the words ", service organization, and the Funding Corporation" after the word "bank" in paragraph (c).

§ 612.2170 [Amended]

25. Section 612.2170 is amended by removing the words "and service organization" and adding in their place, the words ", service organization, and the Funding Corporation" in paragraph (a).

§ 612.2180 [Amended]

26. Section 612.2180 is amended by removing the words "and service organization" and adding in their place, the words ", service organization, and the Funding Corporation" in paragraph (a); and by adding the words ", Funding Corporation," after the word "bank" in paragraph (b).

§ 612.2230 [Amended]

27. Section 612.2230 is amended by adding the words ", the Funding Corporation," after the word "bank" in paragraph (a)(1).

PART 614—LOAN POLICIES AND OPERATIONS

28. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

Subpart G—Interest Rates and Changes

§ 614.4310 [Removed]

29. Section 614.4310 is removed.

Subpart M—Loan Approval Requirements

§ 614.4460 [Amended]

30. Section 614.4460 is amended by removing the words "the district bank or Central Bank" and adding in their place, the words "a bank" in paragraph (c).

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

31. Section 614.4640 is revised to read as follows:

§ 614.4640 Rates and fees.

Interest on loans to OFIs shall be charged and collected at same rate and on the same basis as to associations. Except as provided in § 614.4560(b) of this subpart, a bank may charge servicing fees in connection with credit extended to financing institutions provided comparable fees are charged to associations.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

32. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 3132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

§ 615.5103 [Reserved]

33. Section 615.5103 is removed and reserved.

Subpart D—Other Funding

§ 615.5120 [Amended]

34. Section 615.5120 is amended by removing the words "the Federal intermediate credit bank" and adding in their place, the words "a Farm Credit Bank" in the fourth sentence immediately following the word "with" in paragraph (a).

Subpart E—Investments

35. Section 615.5135 in removed from subpart D and added to subpart E.

§ 615.5150 [Amended]

36. Section 615.5150 is amended by removing the words "Federal land banks and Federal intermediate credit banks" and adding in their place "Farm Credit Banks" in the first sentence of the concluding text of paragraph (c).

37. Section 615.5151 is revised to read as follows:

§ 615.5151 Additional investments of Farm Credit Banks.

Farm Credit Banks may purchase nonvoting stock and participation certificates of any pay in surplus to associations in their respective districts when authorized by the bank board of directors on a case basis and approved by the Farm Credit Administration.

Subpart F—Minimum Investment Requirement

§ 615.5180 [Amended]

38. Section 615.5189 is amended by removing the words "Federal land banks and the Federal intermediate credit banks" and adding in their place, the words "Farm Credit Banks" in the first sentence.

Subpart G—Deposit of Funds

§ 615.5190 [Amended]

39. Section 615.5190 is amended by removing the words "Central Bank for Cooperatives" and adding in their place "National Bank for Cooperatives" in paragraph (b).

Subpart H—Capital Adequacy

§ 615.5201 [Amended]

40. Section 615.5201 is amended by removing the words "Federal intermediate credit bank," in paragraph (f).

§ 615.5210 [Amended]

41. Section 615.5210 is amended by removing the words "and Federal intermediate credit bank" in the first sentence of paragraph (d)(2)(i); and by removing the words "and a Federal intermediate credit bank" in paragraph (d) (2) (ii).

Subpart I—Issuance of Equities

§ 615.5250 [Amended]

42. Section 615.5250 is amended by removing the reference "(b)(1)" and adding in its place "(d)(1)" in paragraph (d)(2).

PART 617—INVESTIGATIONS

43. The authority citation for part 617 continues to read as follows and all other authority citations throughout part 617 are removed:

Authority: Secs. 5.9, 5.17(a)(10); 12 U.S.C. 2243, 2252(a)(10).

Subpart B—Investigations—Personnel

§ 617.7110 [Amended]

44. Section 617.7110 is amended by removing the words "both banks" and adding in their place, the words "the bank" in paragraph (d).

Subpart C—Investigations—Borrowers and Others

§ 617.7150 [Amended]

45. Section 617.7150 is amended by removing the words "for him" and by removing the word "his" and adding in its place the word "a" prior to the word "determination" in the last sentence of paragraph (b).

PART 618—GENERAL PROVISIONS

46. The authority citation for part 618 continues to read as follows:

Authority: Secs. 2.5, 1.5, 1.11, 1.12, 2.2, 2.4, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, and 2252.

Subpart F—Miscellaneous Provisions

§ 618.8210 [Amended]

47. Section 618.8210 is amended by removing the words "as prescribed in part 616 of this chapter" from the last sentence.

Subpart G—Releasing Information

48. Section 618.8320 is amended by revising paragraph (b)(2) to read as follows:

§ 618.8320 Data regarding borrowers and loan applicants.

* * * * *

(b) * * *

(2) Accredited representatives of the Federal Bureau of Investigation, Department of Justice; the Office of Inspector General, United States Postal Service; the Secret Service; the Internal Revenue Service; and the Office of Inspector General, United States Department of Agriculture may, upon presentation of official identification and a written request identifying the individual case on which information is sought, the particular information desired and a certification that such information is pertinent to the official information of the case and is requested for confidential use of the investigating office, be given access to information pertinent to their official investigations of individual cases.

* * * * *

§ 618.8325 [Amended]

49. Section 618.8325 is amended by removing existing paragraph (d).

Subpart H—Disposition of Obsolete Records

50. Section 618.8360 is amended by removing the introductory paragraph and paragraphs (d) through (h); and by revising paragraph (a)(5) to read as follows:

§ 618.8360 Authorization

(a) * * *

(5) Federal records (seel following subpart I of this part).

* * * * *

PART 619—DEFINITIONS

51. The authority citation for part 619 is revised to read as follows and all other authority citations throughout part 619 are removed.

Authority: Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8; 12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2.

§ 619.9146 [Amended]

52. Section 619.9146 is amended by adding ", and to the Funding Corporation" following the word "Act".

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

53. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11; 12 U.S.C. 2252, 2279aa–11.

Subpart A—Accounting Requirements

§ 621.1 [Amended]

54. Section 621.1 is amended by removing the words "Farm Credit System Capital Corporation and its successors" and adding in their place, the words "Funding Corporation" in the first sentence.

§ 621.2 [Amended]

55. Section 621.2 is amended by adding the words " In process of collection.' " immediately proceding the introductory text of paragraph (a)(11); and by removing the words "Farm Credit System Capital Corporation and its successors" and adding in their place, the words "Funding Corporation" in paragraph (a)(12).

Subpart B—Reports of Condition and Performance

§ 621.10 [Amended]

56. Section 621.10 is amended by removing the words "Office of Administration, Management Information Division" and adding in their place, the words "Office of Examination" in paragraph (c).

Dated: January 17, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-1649 Filed 1-23-91; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776 and 799

[Docket No. 901223-0323]

Foreign Policy Controls on Chemical Weapon Precursors; Revisions

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: In support of U.S. policies opposing the proliferation and prohibited use of chemical weapons, the Department of Commerce is expanding the foreign policy controls on exports of certain chemical weapon precursors (i.e., chemicals that can be used in the manufacture of chemical weapons).

This final rule amends Export Control Commodity Numbers (ECCNs) 4798B and 5798F on the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR), to increase the validated licensing requirements for two chemicals: Ethylene chlorohydrin [2-Chloroethanol] (C.A.S. #107-07-3) and Triethanolamine (C.A.S. #102-71-6). Under this rule, these chemicals are controlled by ECCN 4798B and require a validated license for export to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland. Previously, these chemicals were controlled under ECCN 5798F and required a validated license for export to Country Groups S and Z, Iran, Iraq, Syria, and military and police entities in the Republic of South Africa.

This rule also revises ECCNs 4798B and 5798F to require that the chemicals controlled under these entries be reported in liters or kilograms, as appropriate. Previously, these chemicals were required to be reported in dollar value.

EFFECTIVE DATE: This rule is effective January 24, 1991.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377-4531.

For questions of a technical nature on chemical weapon precursors, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377-5695.

SUPPLEMENTARY INFORMATION:

Background

This final rule expands the number of countries for which a validated license is required to export the following chemicals: Ethylene chlorohydrin [2-Chloroethanol] (C.A.S. #107-07-3) and Triethanolamine (C.A.S. #102-71-6). Under this rule, a validated license is now required to export these two chemicals to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland. This rule amends ECCNs 4798B and 5798F on the CCL to reflect these changes in validated licensing requirements.

The United States participates in the 20-member Australia Group, which seeks to prevent the proliferation of chemical and biological weapons. The changes made by this rule are intended to harmonize our export controls with those exercised by other countries participating in the Australia Group.

The Department of Commerce has submitted a report to the Congress in accordance with section 6 of the Export Administration Act of 1979, as amended, to support this expansion in U.S. foreign policy controls.

The general policy of denying applications to export or reexport these chemicals to Iran, Iraq, Libya and Syria remains in effect. Exports and reexports to other destinations will generally be approved unless there is reason to believe the chemicals will be used for chemical warfare purposes. Authorization must be obtained from the Office of Export Licensing (OEL) to reexport these chemicals to Iran, Iraq, Syria, and Libya, except that authorization is not required for reexports from NATO member countries, Australia, Austria, New Zealand, Ireland, Japan, and Switzerland because these countries maintain export controls on precursor chemicals.

This rule also amends Supplement No. 1 to § 799.2 (Commodity Interpretations) by revising "Interpretation 23: Precursor Chemicals" to reflect the changes in the lists of chemicals controlled by ECCNs 4798B and 5798F.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on ligher, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before February 7, 1991, may be exported under the previous general license provisions up to and including February 22, 1991. Any such items not actually exported before midnight February 22, 1991, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an

opportunity for public comment be given for this ru.e.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 776 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 776 and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 776 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981; by Pub. L. 99–64 of July 12, 1985; and by Pub. L. 100–418 of August 23, 1988; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, Pub. L. 99–64 of July 12, 1985 and Pub. L. 100–418 of August 23, 1988; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); and Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505; October 29, 1986). Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 776—[AMENDED]

3. Section 776.19 is amended by redesignating paragraphs (h) through (l) as new paragraphs (i) through (m), respectively, and by adding a new paragraph (h), as follows:

§ 776.19 Chemical and biological agents.

* * * * *

(h) Applications to export 2-Chloroethanol and triethanolamine from the United States to all destinations (except Iran, Iraq, Libya, or Syria) in performance of a contract entered into before January 15, 1991, will generally be approved. This provision does not apply to exports to Country Group Z or to military or police entities in the Republic of South Africa. For exports of 2-Chloroethanol to Syria, see paragraph (c) of this section. For exports of triethanolamine to Iran, Iraq, Libya, or Syria, see paragraph (f) of this section.

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

4. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products, and Related Materials), ECCN 4798B is amended:

a. By revising the *Unit* paragraph under the Controls for ECCN heading;

b. By redesignating paragraph (9) in the List of Chemicals Controlled as new paragraph (11);

c. By removing the word "and" immediately following the semicolon at the end of paragraph (8) and redesignating paragraph (8) as new paragraph (9);

d. By redesignating paragraphs (1) through (7) as new paragraphs (2) through (8), respectively; and

e. By adding new paragraphs (1) and (10), as follows:

4798B Precursor and intermediate chemicals used in the production of chemical warfare agents.

Controls for ECCN 4798B

Unit: Report in "liters" or "kilograms", as appropriate.

* * * * *

List of Chemicals Controlled by ECCN 4798B

* * * * *

(1) (C.A.S. #107–07–3) 2-Chloroethanol;

* * * * *

(10) (C.A.S. #102–71–6) Triethanolamine; and

(11) * * *

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5798F is amended:

a. By revising the *Unit* paragraph under the Controls for ECCN heading;

b. By removing paragraph (4) in the List of Chemicals Controlled;

c. By redesignating paragraphs (5) through (38) as new paragraphs (4) through (37), respectively;

d. By adding the word "and" immediately following the semicolon at the end of paragraph (39) and redesignating paragraph (39) as new paragraph (38);

e. By removing paragraph (40); and

f. By redesignating paragraph (41) as new paragraph (39).

6. In Supplement No. 1 to § 799.2 (Interpretations), Interpretation 23 (Precursor Chemicals) is amended:

a. By redesignating paragraph (a)(9) as new paragraph (a)(11);

b. By redesignating paragraphs (a)(1) through (a)(8) as new paragraphs (a)(2) through (a)(9), respectively;

c. By adding new paragraphs (a)(1) and (a)(10);

d. By removing paragraphs (b)(4);

e. By redesignating paragraphs (b)(5) through (b)(39) as new paragraphs (b)(4) through (b)(38), respectively;

f. By removing paragraph (b)(40); and

g. By redesignating paragraph (b)(41) as new paragraph (b)(39), as follows:

Supplement No. 1 to § 799.2—Interpretations

* * * * *

Interpretation 23: Precursor Chemicals

* * * * *

(a) * * *

(1) (C.A.S. #107–07–3) 2-Chloroethanol, 2-Chloro-1-ethanol, Chloroethanol, 2-Chloroethyl alcohol, Ethene chlorohydrin, Ethylchlorohydrin, Ethylene chlorhydrin, Ethylene chlorohydrin, Glycol chlorohydrin, Gylcol monochlorohydrin, 2-Hydroxyethyl chloride,

* * * * *

(10) (C.A.S. #102–71–6) Triethanolamine, Alkanolamine 244, Nitrilotriethanol, 2,2',2"-Nitrilotriethanol, 2,2',2"-Nitrilotris(ethanol), TEA, TEA(amino alcohol), Tri(2-hydroxyethyl)amine, Triethanolamin, Tris(.beta.-hydroxyethyl)amine, Tris(2-hydroxyethyl)amine, Trolamine,

* * * * *

Dated: January 17, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91–1609 Filed 1–23–91; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 87P–0033]

Medical Devices; Clarification of FDA's Policy on Labeling of Surgical Sutures; Exemption From the Prescription Labeling Requirements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Policy statement; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a previous policy statement on labeling of

surgical sutures that appeared in the Federal Register of March 2, 1990 (55 FR 7491). The policy statement incorrectly exempted surgical sutures from the prescription device labeling requirements. The agency is publishing this correction to make it clear that such products are not exempt from the requirement that device labeling contain hazards, warnings, and information and directions for use, when appropriate.

DATES: Effective March 25, 1991; written comments by March 25, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 2, 1990 (55 FR 7491), FDA published a policy statement, regarding the labeling of surgical sutures. This policy statement, which was issued to response in a petition, was intended primarily to clarify that surgical sutures are exempt from the prescription legend labeling requirement in 21 CFR 801.109(b). However, the policy statement incorrectly exempted surgical sutures from the prescription device labeling requirements of 21 CFR 801.109(c). It is the agency's policy that surgical sutures remain subject to the requirement that labeling include information on certain hazards, warnings, and information and directions for use. Therefore, FDA is correcting the statement of March 2, 1990, with regard to 21 CFR 801.109(c) in that compliance with this provision is still required. However, surgical sutures continue to be exempt from the prescription legend labeling requirement in 21 CFR 801.109(b).

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the corrected policy statement. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket found in brackets in the heading of this document. Received comments are available for public inspection in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 17, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–1599 Filed 1–23–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB21

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Training

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the rules governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS). This rule revises the minimum training requirements for personnel engaged in drilling and production operations in the OCS and establishes new minimum training requirements for personnel engaged in well-completion and well-workover operations in the OCS.

EFFECTIVE DATE: This rule is effective February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION: When the Minerals Management Service (MMS) proposed to consolidate its operating rules for oil and gas and sulphur operations in the OCS, a series of questions were asked concerning changes to the portion of the rules that was applicable to training of workers in the OCS. Based on the responses received, MMS developed revisions to existing requirements for the training of personnel involved in drilling operations and developed new requirements for the training of personnel engaged in well-completion, well-workover, and production operations. The proposed new training regulations were published in the Federal Register on August 1, 1989 (54 FR 31768), with a public comment period through October 2, 1989. In addition to publication of proposed changes to the regulations, the proposed rule also included a series of questions concerning several issues associated with MMS's regulation of training of employees in the OCS.

Comments were received primarily from companies that will be required to assure that their employees are trained in accordance with the regulations and from organizations that conduct classes to train personnel pursuant to current MMS training requirements and anticipate conducting training pursuant to any new requirements promulgated by MMS. Comments concerned the questions that were raised as well as specific provisions of the proposed requirements. The following discussion will consider the questions raised, discuss the comments on the proposed rule, and point out differences in the final rule from the proposed rule.

Question 1

Separate courses are proposed for drilling operations and for well-completion and well-workover operations with the tree removed. Should these two areas be taught in separate courses or in a single combined course of longer duration than each separate course but not as long as the total of each course taught separately? Another option would be to allow the training schools the option of teaching the courses separately or in a combined course. The proposed rule allows the combination of any courses. The specified requirements for a standard course would also apply to a combined course, and the approval of the course would be handled on a case-by-case basis.

Comment: The majority of those who commented on combining courses supported an approach that allows a combination of courses. There were comments both for and against the specification of the length of combined courses. Some favored firm standards for a combined course, and others believed that the evaluation of combined courses should be done on a case-by-case basis. Some commenters favored a single combined course that would be given to all types of workers.

Response: The final rule includes separate courses and provides options under which courses may be combined. The proposed rule did not specify the length of combined courses. The MMS agrees with the commenters who favor more standards for combined courses, and the final rule includes specification of minimum lengths for various combinations of courses. This aspect is discussed further in the section-by-section discussion of comments.

Question 2

In the proposed rule, the required courses for floorhands for drilling operations and for well-completion and workover operations with the tree removed do not require approval by MMS. Should the final rule include provisions requiring MMS approval for these courses for floorhands, or are the requirements in the proposed rule sufficient?

Comment: The majority of those who commented on the question of certification of floorhands training favored the approach in the proposed rule that training courses for floorhands would not be MMS approved. One commenter favored periodic audits of floorhands training in lieu of certification. A few commenters favored MMS certification of floorhands training. One of those favoring MMS certification stated that the quality of the training would suffer without MMS certification.

Response: The final rule does not require MMS certification of floorhands training. Requirements for floorhands training are included in the final rule and the lessee will be responsible for assuring that floorhands receive the necessary training.

Question 3

In the proposed rule, floorhands for drilling operations and for well-completion and well-workover operations could maintain their qualification by participating in weekly drills. Should floorhands be required to repeat training courses periodically (e.g., every 4 years)?

Comment: Some comments stated that repetition of floorhands training is not necessary; others stated that training for floorhands should be repeated every 4 years; one stated that refresher training should be taken periodically, and one suggested that training only be repeated if a floorhand missed drills for a year. One commenter suggested a refresher course once each year. One commenter suggested that floorhands training include theory and techniques.

Response: In the final rule, floorhands are required to participate in weekly drills to maintain their qualification. Additional requirements for repetition of training may be instituted by individual lessees, when necessary. The MMS has included the level of theory at each level based on MMS's assessment of the need of each particular worker.

Question 4

The proposed rule does not include specific prerequisite requirements for a trainee to be eligible to take a course. Should prerequisites be included in the final rule, or should a potential trainee be able to attend any course the trainee wishes?

Comment: The majority of those who commented on this subject recommended that prerequisites not be required. Several commenters recommended that prerequisites be decided by the employee's company. Of the commenters who favored the use of prerequisites, there were many opinions of what the prerequisites should be. One commenter stated that existing prerequisites are not effective and that prerequisites should not be included in the rule unless MMS develops a new approach to prerequisites. Commenters suggested 1 year of on-the-job training as a prerequisite to taking a course, prerequisites for supervisors but not for floorhands, prerequisites only for advanced courses, on-the-job training or an engineering degree as a prerequisite, and prerequisites for production courses.

Response: The main concern of MMS is that persons operating in the OCS be qualified to perform their duties. Accordingly, emphasis is being placed on course content, method of instruction, and testing. If students are able to understand the required material and are able to pass both written tests and simulator tests, they should be able to perform on the job. The MMS agrees that further regulation of prerequisites is not necessary, and the need for prerequisites can be determined by the lessee.

Question 5

Are the minimum course lengths in the proposed rule appropriate for the course subject matter? The proposed rule does not specify minimum course lengths for courses for supervisors of well-servicing operations (snubbing, coil-tubing, and small-tubing operations). The MMS will consider including minimum course lengths for well servicing in the final rule. What should the minimum course length be (number of hours) for a basic or refresher course for well-servicing operations?

Comment: Several commenters recommended that a minimum length not be established for well-control courses. They recommended that courses be evaluated on a case-by-case basis. One commenter favored course lengths being established as guidelines. On the other hand, several commenters favored establishment of course lengths and made recommendations concerning the length of courses, and others favored the course lengths included in the proposed rule. Specific comments concerning lengths of courses varied. Specific suggestions were received for each type of course. One commenter suggested that the rule state that minimum course time does not include testing time.

Response: The MMS has determined that to maintain a uniform minimum level of training in the absence of having MMS administer all tests, it is necessary to establish a minimum course length for all courses. The course lengths are discussed further in the section-by-section discussion of comments.

Question 6

Should all well-servicing schools be required to teach all three well-servicing areas (snubbing, coil-tubing, and small-tubing operations), or should a training facility be allowed to have a course certified for one, two, or all three of the areas and have trainees become qualified in only the areas covered in the course? The proposed rule does not include specific training for supervisors of wireline operations. Should the final rule include requirements for training of supervisors of wireline operations?

Comment: Several commenters recommended that the rule allow well-servicing courses to include coil tubing, small tubing, and snubbing in separate courses or as a combined course. One commenter recommended that the schools be required to teach all three areas. Commenters expressed recommendations concerning course length with suggestions of a 16-hour combined course and a combination of three 8-hour segments to cover the three areas of well-servicing training. One commenter recommended that persons certified for drilling be allowed to conduct small-tubing operations in conjunction with drilling operations and that wireline supervisors take the well-servicing well-control course but not be required to maintain certification. Several commenters recommended that wireline supervisors be required to take the same training as other well-servicing supervisors. Other commenters disagreed and recommended that wireline supervisors not be required to take well-servicing training. Comments were also received that questioned the need for well-servicing training.

Response: Requirements for well-servicing training are included in the final rule. Coil-tubing, small-tubing, and snubbing operations may be taught separately so that an employee will only need to take the portion of the course applicable to that worker's job. The training of wireline supervisors is addressed with responses to question 7.

Question 7

Is a separate course appropriate for well-servicing operations, or should well servicing be integrated into other training and a provision be added to require that an individual trained for production safety systems be present during well-servicing operations with the tree in place and that an individual trained in well-completion and well-workover well control be present during well-servicing operations with the tree removed?

Comment: Some commenters recommended that well-servicing training be separate from other training, and other commenters recommended that well-servicing training be combined with other training. Other recommendations were that a person trained in well control be present and that persons trained in production safety systems be present.

Response: The MMS has not extended the rule to include wireline supervisors. The MMS will monitor the effectiveness of the rules now being established and the safety record for wireline operations and, if necessary, will initiate a new rulemaking action to address training of wireline supervisors. The need for additional requirements for wireline supervisors can be better addressed after experience is gained with regard to effectiveness of training requirements for other aspects of well servicing.

Question 8

To measure the effectiveness of training programs, MMS may wish to randomly provide and/or administer tests other than those provided for in the training program. The MMS is considering including such testing authority in the final rule. Interested parties are invited to comment on the use of MMS developed and/or administered tests and to address the question of how MMS can best monitor the effectiveness of training programs.

Comment: Several commenters recommended that current practice is sufficient and that random testing is not needed. Others favored random testing as a means to measure the effectiveness of the training program. One commenter recommended that MMS conduct all of the testing or none. Another commenter suggested that MMS provide basic questions to the schools.

Response: The MMS continues to believe that the schools are in the best position to develop and administer tests; however, MMS also has a responsibility to ensure that tests accurately measure that trainees have properly learned the material and to ensure that workers on the platform have proper knowledge to accomplish their jobs. To accomplish this, MMS has included a provision that will enable MMS to conduct random tests at schools or platforms. To a great extent, MMS anticipates that questions in the random tests will be drawn in large part from actual questions developed by schools and submitted to MMS in association with resquests for approval of training programs. Testing will not be initiated by MMS until a process has been developed to govern the testing process. This will address what action will be taken in the event an employee fails the test. As stated in the final rule, a student at a school will be retested in the event that the test is failed. However, MMS believes that employees at the paltform cannot be evaluated against the same standard as someone who has just completed a course. Accordingly, the interest at the platform will be in the area of assuring that employees have retained the knowledge necessary to provide for safe operations. Since an employee on a platform will not be identified by name on his/her test, poor performance on tests given at the worksite will be dealt with differently than a failure at a school. If results of testing at the worksite indicate that workers ar not properly trained, the operator will be responsible for correcting the situation.

Some comments were received with regard to several sections in the rule. These are discussed either as a general comment or in connection with the first section that the comment addressed. Nonsubstantive changes that were made to clarify the rule are not discussed unless the discussion was thought to aid in the understanding of the rule. The following pertains to general comments received.

Commenters supported the requirements for both basic and refresher courses and commended MMS's commitment to approve training programs and the establishment of concrete guidelines for the training process.

Comment: Several commenters recommended adoption of industry standards in lieu of this rule. They stated that the industry standards are not deficient.

Response: The MMS believes that a more active role on the part of MMS is needed to ensure proper training of all OCS employees by all lessees and contractors. Past practic under MMS regulation of training for drilling well control has resulted in more consistency withr regard to minimum standards for training of offshore workers. While MMS recognizes that many lessees have developed excellent raining programs under industry standards, MMS continues to believe that the training received under MMS-regulated drilling training has been more effective in ensuring that all operators assure that their workers are properly trained.

Comment: One commenter asked whether workers performing plugging and abandonment operations would require training in accordance with these rules.

Response: Workers will need to be trained in accordance with either drilling well control or well-completion and well-workover well control when performing operations with the tree not in place. If the plugging and abandoment operations were conducted prior to the intital installation of the tree, then the workers could be trained in either drilling well cotnrol or well-completion and well-workover well control. If the plugging and abandonment operations were conducted after the initial installation of the tree, then the workers would need to be trained in well-completion and well-workover well controll.

Comment: One commenter recommended that after a person takes the first basic course in well control, subsequent basic courses should be shorter than the first.

Response: The MMS believes that after 4 years the worker is ready for another full course. These rules allow the worker to take an advanced course in lieu of the basic course in cases where the worker can benefit from a higher level of instruction.

Comment: One commenter recommended that the final rules allow for courses to be taught to onshore employees.

Response: Traditionally, MMS-approved courses have been taken by both onshore and offshore workers; however, MMS does not have jurisdiction to require training of workers other than those employed in the OCS.

Comment: One commenter recommended that all courses approved at the time the rule becomes effective have their approval extended to a common date for all organizations offering training courses.

Response: Extending the approval of all courses so that their approval would expire on the same day would result in an unnecessary burden on MMS to get all courses reapproved by the same date (i.e., the time approval expired). The process provided in the rule will result in a more efficient transition from the old rules to the new rules.

Comment: Several comments were received with regard to advanced courses. Several commenters suggested

that "or advanced" be added each time a basic course was required to allow advanced courses to be taught in all areas. Others requested clarification of the use of advanced courses and whether an advanced course required a subsequent advanced refresher course.

Response: An advanced course may be taken in lieu of any basic course. The term "or advanced" has been added in appropriate places throughout the rule. There are no provisions for advanced refresher courses. Due to the relatively short nature of a refresher course, it would be impractical to institute advanced refresher courses.

Comment: One commenter asked what was meant by successful completion of the training course for floorhands.

Response: As stipulated in § 250.212(b)(2), a floorhand successfully completes a course by completing his/her responsibilities in a qualifying test consisting of participation in a well-controll drill at the job site and doing so within a prescribed time limit. Other requirements for successful completion of training are determined by the operator.

Comment: One commenter noted that company literature is required to be included in the manual and asked if the literature should be removed.

Response: It is permissible for a training organization to use company literature to explain information to trainees. The applicable rule specifies minimum requirements to be included. How the training organization will meet these requirements and how far beyond the minimum requirements the training organization chooses to go are decisions to be made by the training organization.

Comment: One commenter suggested the inclusion of specifications concerning the type of simulator to be used.

Response: The wording in the rule has been revised to clarify that simulators must be able to simulate the particular function being taught. Capabilities of simulators will be evaluated as part of the evaluation of programs submitted for MMS approval.

Comment: Several commenters recommended that in § 250.211(a)(12), the 4-year limit on course approval be eliminated.

Response: The 4-year limit on approval has been retained in § 250.211(a)(10). Experience has shown that training organizations can change significantly over a 4-year period and in many cases are no longer in existence 4 years after original approval. Recertification every 4 years is necessary to ensure that the training organization's program remains of equal or greater quality than when it was originally approved. The burden of recertification is minor since training organizations need only submit changes to the program previously approved by MMS.

Comment: In § 250.210 and later sections, the proposed rule used the term "training in well control" and "training in blowout prevention and well control." Several commenters recommended the deletion of the use of "blowout prevention."

Response: The term "well control" encompasses both maintaining control of wells through the prevention of blowouts and regaining control of wells in the event that a blowout occurs. The MMS agrees that the term "well control" is sufficient and has been used throughout the rule for consistency.

Comment: Comments were received concerning § 250.210(b)(2) with regard to when drilling training was needed and when well-completion and well-workover training was needed. Some commenters recommended that drilling training should be sufficient whether the worker was performing drilling, well-completion, or well-workover operations. Others recommended that well-completion and well-workover training be sufficient. Another commenter suggested that the provision to allow well-completion operations to be performed with either drilling or well-completion training be extended to include during the installation of the tree rather than being limited to prior to installation of the tree.

Response: The differentiation between drilling training and well-completion and well-workover training has been maintained. There are sufficient differences between drilling operations and well-workover operations to maintain the different courses. To provide additional flexibility, lessee employees with either drilling training or well-completion and well-workover training are allowed to perform well-completion operations. As recommended by the commenter, the final rule has been modified to include the installation of the tree as part of the well-completion operation.

Comment: Several commenters suggested that in §§ 250.210(b)(2)(iii) and 250.213(g), the phrase "in the general area of the worksite" be added to allow the trained person to be anywhere on the platform or facility. Others requested clarification of this point.

Response: The MMS does not believe that having a trained person elsewhere on the platform is sufficient. When a person with specific training is required, that person should be in the immediate area where the work is being performed.

Comment: Several commenters recommended that in § 250.210(b)(3), the terms "repair or testing" be deleted because they are part of maintenance. Others recommended deleting the requirement for training of the person with overall responsibility for production operations. Other commenters favored retaining the same requirement.

Response: The terms "repair or testing" have been retained. They make it clear that persons who test or repair production safety equipment on the platform must be trained in accordance with these rules. The requirements for training of the person with overall responsibility for production operations has been retained. It is important that when decisions are made concerning the safety system on a platform, the person making those decisions is knowledgeable concerning the production safety systems.

Comment: Several commenters recommended that § 250.210(c) be modified to allow training records to be kept at the employer's field office nearest the facility or other location convenient to the District Supervisor. Another commenter recommended that the rule require that records be kept at the platform but make it clear that the wallet card will suffice as the record.

Response: The requirement to keep records on the platform has been retained. It is important that when inspectors visit a platform, records are available to show that the actual people working on the platform have received the proper training for the work being performed. Wallet cards, which are currently issued by training companies, will serve this purpose.

Comment: One commenter requested clarification of what was meant by the phrase "under the direct supervision" in § 250.210(d).

Response: "Under the direct supervision" means that the supervisor is present and positioned at the worksite in a manner that permits the supervisor to assure that operations are performed in a manner consistent with MMS requirements for safety of operations and protection of the environment.

Comment: Several commenters recommended that § 250.210(e) be modified so that when workers switch from drilling to well-completion and well-workover training or from surface to subsea training, it would not be considered an upgrade and would not require a new basic course.

Response: This recommendation has not been adopted. Differences between

courses are too great to expect a person to learn the additional material in a refresher course.

Comment: Several commenters recommended that in § 250.210(f)(2) and elsewhere, the use of a deadline for subsequent refresher training be replaced by the use of a 120-day window as is used in MMS's current regulations governing training programs. Those favoring the use of the window (60 days before through 60 days after the trainee's anniversary date) for refresher courses cited the advantage of maintaining a consistent anniversary date as opposed to the proposed rule, which would have resulted in a new anniversary date each time a refresher course was taken.

Response: The final rule provides the 120-day window wherever subsequent refresher training is required. This action should simplify recordkeeping relative to when a worker's next refresher training is due.

Comment: Several commenters recommended the deletion of requirements in § 250.210(f)(3), for refresher training for production workers. Another commenter recommended that the timing of refresher courses should be at the discretion of the lessee.

Response: Both the requirement for refresher courses and the timing for such courses have been retained. Refresher training for production workers is required once every 2 years as opposed to each year for drilling, well-completion, and well-workover personnel.

Comment: Several commenters recommended the deletion of the identification of minimum times for courses from § 250.211(e)(4). Other commenters, in response to the questions in the preamble, recommended that a specific number of hours be included for all courses.

Response: Course length requirements provide a menas of assuring that all trainees receive a minimum amount of instruction. While MMS recognizes that this, in itself, does not guarantee quality, the course length requirements are considered to be desirable and have been retained. In addition, course length requirements have been developed for the various course combinations.

Comment: One commenter recommended deletion of the references to well-servicing in § 250.211 (a) and (e).

Response: The MMS continues to believe that training requirements for well servicing are needed, and those requirements are retained in the final rule. Requirements for well-servicing courses were proposed because MMS believes well servicing to be a critical time when well-trained workers are needed to maintain well control.

Comment: Commenters recommended that § 250.211(a)(7) allow a student to take an exam before completing all makeup work when part of a session is missed. They also recommended that the rule define an allowable absence.

Response: It is necessary that a trainee attend the entire course or make up all parts of a session that is missed prior to taking an exam. If a substantial part of the course is missed, it must be repeated in its entirety. In cases where only a short time was missed, the instructor can provide an impromptu makeup session after the end of a scheduled session. (This requirement is now in § 250.211(a)(5).)

Comment: One commenter requested that the requirement in § 250.211(a)(10) to give notice of a change in course schedule be deleted as impractical.

Response: This requirement has been retained in § 250.211(a)(8). It is necessary for MMS to know when classes are scheduled to permit audits of schools to take place on either an announced or unannounced basis. Schedule updates can be provided periodically and will not pose any unnecessary burden.

Comment: Several commenters recommended that requirements in § 250.211(a)(14) be deleted for reporting to MMS information concerning the persons who successfully completed the course.

Response: This requirement has been retained in § 250.211(a)(12). It is necessary to provide MMS with information necessary to determine that schools are complying with the requirements of the regulations and are verifying information such as eligibility requirements of trainees; e.g., is the trainee eligible to take a refresher course, or is the trainee required to repeat the basic course because the refresher course was not timely taken?

Comment: Commenters recommended deletion of the requirement in § 250.211(a)(14)(vii), to specify each element that each instructor will teach. The reason given was that this did not permit training organizations to change instructors when circumstances warranted.

Response: The intent of the requirement is to ensure that each portion of the course is taught by a qualified instructor. To accomplish this, the rule was changed to require that the training organization provide the name(s) and qualifications of the instructor(s) and the portions of the course each instructor may teach. This will provide MMS with the needed information, while providing greater flexibility to training organizations to make necessary changes among instructors qualified to provide the approved training.

Comment: One commenter stated that the requirement in § 250.211(a)(14) (x) and (xi) for actual company job title is unnecessary and varies from company to company.

Response: In addition to certifying training organizations, MMS also needs to ensure that workers in the OCS have the appropriate training for the job they are performing. The MMS recognizes that the titles will be different from company to company. This information will, nevertheless, be of value to MMS and aid in compliance with and enforcement of the rules. (This requirement is now in § 250.211(a)(14) (xi) and (xii).)

Comment: One commenter recommended deletion of the requirement in § 250.211(a)(14)(xii), for submission of test scores.

Response: The MMS has found that test scores, in combination with evaluation of the tests and audit of training organizations, provide useful information in evaluating the effectiveness of a training program. (The requirement for submission of test scores has been retained in § 250.211(a)(14)(xiii)).

Comment: Commenters requested a definition of nonrepetitive tests as used in § 250.211(c)(5)(iii).

Response: The prohibition of nonrepetitive tests requires a training organization to develop tests for each session it teaches. This does not mean that no questions can be repeated from one test to another. It does mean that the test given at the end of a session must be different from the tests given during the preceding or subsequent sessions. Training organizations are expected to have a sufficiently large number of questions from which to draw in developing a particular test so that a student could not pass a test by reviewing questions and answers from past tests rather than by learning the material as it is presented. The MMS does not believe that it is necessary to establish a rigid limit with regard to how often a question may be used; e.g., not more often than once every 4 years. If a training organization feels a need for guidance, such guidance should be obtained during the course evaluation process.

Comment: One commenter recommended that the 48-hour requirement in §§ 250.211(c)(5)(iv), 212(f)(4), and 213(f)(4) for the taking of a retest be eliminated.

Response: The provision has been retained in §§ 250.211(c)(5)(v), 212(f)(4) and 213(f)(4). The provision for a retest within 48 hours allows for situations where a trainee basically understood the material but either had a problem taking the test or was confused about a portion of the material. In cases where the trainee lacks a basic understanding of the material and needs more than 48 hours to learn the material, the trainee probably needs to retake the course in order to properly understand the material. Under unusual circumstances, a request for a departure can be submitted in accordance with § 250.210(h).

Comment: One commenter recommended that the provision in § 250.211(c)(8), for oral testing, be eliminated since, in many cases, understanding written material (e.g., information in the driller's report) is an integral part of safety.

Response: The MMS has adopted this recommendation. The rule has been changed to allow oral assistance during testing rather than oral tests.

Comment: One commenter recommended that § 250.211(d) be modified to allow advanced courses to omit practice simulator runs.

Response: This recommendation has not been adopted. Simulator runs are an important part of training. As envisioned, an advanced course may need to simulate resolution of a more difficult situation.

Comment: One commenter questioned whether an advanced course would meet the requirement in § 250.211(d) for repeating of training every 4 years.

Response: The intent of the regulation is to permit an advanced course to be taken in lieu of repeating a basic course. Editorial changes made in the final rule are intended to clarify this point.

Comment: Commenters recommended that § 250.211(e) be modified to require that only a description of materials or manuals be maintained by the student, since providing all slide-tape programs, movies, videos, and other MMS training aids are not practical or reasonable.

Response: As stated in the proposed rule, the requirement is that the trainee (and MMS) be provided a training manual. There is no requirement that the student be provided lecture materials or training aids.

Comment: One commenter recommended that §§ 250.212(b) and 213(b) be modified to remove the requirement to provide documentation of completion of floorhands training tc employee. The commenter suggested that operators be required to retain documentation in the driller's log.

Response: This recommendation was not adopted. Floorhands frequently moved from one platform to another. When an inspector is present on a platform, the inspector needs to be able to verify at the worksite that a floorhand has been properly trained.

Comment: One commenter recommended the deletion of requirements in § 250.212(c)(1) to include field drilling rules.

Response: The MMS recognizes that any specific discussion of field drilling rules would only be applicable in specific fields. This requirement has been modified to require only a general discussion of how field drilling rules may modify other requirements.

Comment: One commenter recommended that in § 250.212(d)(3), "simulator test problems" be changed to "a simulator test problem."

Response: This change was made and is consistent with other requirements.

Comments: Commenters recommended changes in § 250.212(e)(2) concerning the deadline for repeating of training.

Response: These changes are no longer applicable since the rule has been changed to allow a window covering 60 days before and 60 days after the anniversary of the completion of the basic course.

Comment: Several commenters recommended that in § 250.212(f)(2), requirements be modified to allow four persons to work on a simulator at one time. One commenter stated that larger simulators are adequate for proper training of four people at one time and suggested that a restriction of three to a simulator unfairly limits companies who use a larger simulator rather than several smaller simulators. They suggested a case-by-case determination.

Response: The limit of three on a simulator has been retained. The limit of three trainees to a simulator is based upon the quality of the training received and not the size of the simulator. It has been the experience of MMS personnel observing courses that where a fourth person was working on a simulator, that trainee did not have a well-defined role in the work (training) being carried out. Thus, the training received by that trainee is of questionable quality.

Comment: One commenter requested an explanation of whether § 250.213(a)(3) meant how to calculate or how to weight up.

Response: This requirement applies to training for floorhands. The requrement is for the lessee to teach the aspects of weighting up well-control fluid, which would be the responsibility of a floorhand working for the lessee.

Comment: One commenter recommended that § 250.213(c) be modified to include the process of killing the well prior to removing the tree as a period during which trained personnel must be present.

Response: The final rule has adopted this recommendation by including this requirement in § 250.210(b)(2).

Comment: Various commenters recommended deletion of some of the material to be covered for well-completion and well-workover supervisors as listed in § 250.213(c).

Response: The MMS believes that the supervisor should have general knowledge of well-completion and well-workover operations as well as specific knowledge of well control. Many of the areas listed for inclusion were adopted from industry recommeded practices. The MMS considers these to be necessary parts of the course, and they have been retained.

Comment: One commenter recommended that § 250.213(c)(8) and (f)(1)(i) be modified to stipulate the type of simulator required.

Response: This section has been modified to indicate the conditions which the simulator must be able to simulate but not the specific type of simulator to be used.

Comment: One commenter recommended that requirements in § 250.213(c)(19) and (20) be deleted because the items relate to job performance and not to well control.

Response: The MMS believes that some knowledge of the work to be accomplished is necessary. The section has been reworded to indicate which aspects of these items are required to be included.

Comment: One commenter recommended the deletion of requirements in § 250.213(d)(2) and (3) for portions of refresher course related to constant bottomhole pressure techniques and related simulator work.

Response: This recommendation has not been adopted. The MMS considers this to be an important part of the training course.

Comment: One commenter recommended that § 250.213(f) be modified to delete requirements for simulator use for well-completion and workover supervisors.

Response: Simulator training has been retained. This training is valuable for showing the trainee how to recognize potentially dangerous conditions.

Comment: One company suggested several areas for addition to § 250.213(g), for well-servicing training. The items would have covered cases

where the tree was removed during snubbing operations.

Response: This recommendation was not adopted. The MMS does not believe these items to be necessary for minimum well-servicing supervisor training since a crew trained in well-completion and well-worker well control will be present any time that the tree has been removed. Although these items have not been added to the curriculum, operators are encouraged to establish programs that include more than the minimum requirements.

Comment: One commenter suggested that § 250.213(g) be modified to clarify that well-servicing supervisors only needed to take portions of the course applicable to their own specialty (i.e., snubbing, coil tubing, or small tubing).

Response: The final rule has adopted this recommendation.

Comment: One commenter asked what was meant by the reference in § 250.213(g)(1)(i) to subparts E and F.

Response: Regulations governing offshore operations are contained in 30 CFR part 250. Subparts E and F of those regulations address well-completion operations and well-workover operations, respectively.

Comment: Several commenters recommended that most of § 250.214 concerning training of production safety system personnel be deleted and replaced with the American Petroleum Institute document T–2.

Response: This recommendation was not adopted. Section 250.214 was developed to provide MMS with additional oversight over production safety systems training. This oversight is necessary to ensure that training organizations cover all necessary information and that trainees receive proper instruction concerning such information.

Comment: Several commenters requested clarification of requirements in § 250.214(a) concerning the transition from current rules to new rules.

Response: Section 250.214(a) has been revised to clarify requirements for basic and refresher courses during the transition period following the effective date of this rule.

Comment: Several commenters recommended that surface and subsurface courses be offered separately.

Response: The rule does not allow separate courses for surface and subsurface options for production safety system training. It is important that employees be familiar with both types of devices.

Comment: One commenter asked for a clear exemption of contractor personnel from production safety system training requirements.

Response: There is no exemption for contractor personnel. Training requirements are based on the function being performed by the worker working in the OCS. The regulatory requirements apply whether the worker is an employee of the lessee or of a contractor working on the lease.

Comment: Commenters questioned the need for including information in § 250.214(a)(2) (vii) and (viii) (a requirement for the trainee to receive instructions concerning Government regulations that apply to well-completion and well-workover operations, pollution prevention, and waste disposal) and questioned whether indepth instruction was needed.

Response: An understanding of these areas is necessary background for the employee. The MMS agrees that indepth training concerning special techniques is not appropriate since workers will need to receive indepth training specific to the particular equipment or techniques in use on their particular platform.

Comment: Commenters recommended changes in § 250.214(a)(8), to omit the requirement for hands-on training for production safety courses and to allow workers to "test out" with regard to hands-on training (i.e., to take the test without first attending that portion of the course).

Response: The MMS considers hands-on training to be an important part of production safety systems training. Conducting practice runs is a part of the learning process that would be lost if workers were allowed to take a test without first going through the training.

Comment: Commenters suggested that requirements in § 250.214(a)(12) relative to well-workover operations be moved to a separate course, deleted, or limited to general coverage of the topic.

Response: The recommendation has been adopted to the degree that the information may be covered in a general manner. The MMS believes this to be valuable information with which production workers should be familiar.

Comment: In § 250.214(c)(2) (i) and (ii), one commenter did not understand the relationship between the requirement for a basic course after 4 years and a refresher course after 2 years.

Response: This provision requires that 2 years after completing a basic course the worker must take a refresher course. Two years after taking the refresher course would be 4 years after the original basic course and the worker would be required to take another basic course. Each time a worker is required to take a basic course, the worker has the option of taking an advanced course rather than to repeat the basic course.

Comment: In § 250.214(c)(3), one commenter questioned whether a manufacturer's representative would need to be accompanied by a person trained under Subpart O if the representative was working at the manufacturer's plant.

Response: These rules apply to workers in the OCS. Persons working at the manufacturer's plant are not covered.

Comment: One commenter asked how long an on-the-job trainee can work under § 250.214(c)(4) before receiving training.

Response: Section 250.214(c)(4) requires that the trainee be supervised by an individual who is present at the work site and who is qualified under these rules until the worker receives the required training. The economics of having an extra trained person present all the time will dictate that on-the-job training not last for too long a period of time. If a lessee chooses to use this provision for an extended period of time, the presence of the supervisor trained under these rules will provide for safe operations.

Authors

The principal authors of this rule are Lawrence H. Ake, and John V. Mirabella, Offshore Operations, MMS, and Charles J. Schoennagel, and Maurice I. Stewart, Gulf of Mexico Region, MMS.

The Department of the Interior (DOI) has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights.

Executive Order 12291

This amendment rule revises the minimum training requirements for personnel engaged in drilling and production operations in the OCS and establishes new minimum training requirements for personnel engaged in well-completion and well-workover operations in the OCS. The DOI has

determined that this rule will not have a significant effect on the economy and is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Department of the Interior (DOI) has also determined that this document will not have a significant effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction

The information collection requirements contained in proposed Subpart O have been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned approval number 1010–0078.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: October 2, 1990.

B rry Williamson,

Director, Minerals Management Service.

For the reasons set forth in the preamble, part 250 of title 30 of the Code of Federal Regulations is amended as follows:

PART 250—[AMENDED]

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.0 is amended by adding paragraph (x) to read as follows:

§ 250.0 Authority for information collection.

* * * * *

(x) The information collection requirements in subpart O, Training, have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1010–0078. The information is being collected to inform MMS that applicable training programs are sufficient to meet safety and environmental requirements and that the programs are being carried out. The information is used to ensure that workers are properly trained to operate in the OCS. The requirement to respond is mandatory. Public reporting burden for this collection of information is estimated to average 5 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817 and the Office of Management and Budget; Paperwork Reduction Project 1010–0078; Washington, DC 20503.

3. Subpart O of part 250 is revised to read as follows:

Subpart O—Training

Sec.

Subpart O—Training

§ 250.210 General.

(a) *Training performance standard.* Lessee and contractor employees engaged in drilling, well-completion, well-workover, or production operations in the Outer Continental Shelf (OCS) shall be trained in the proper operation of equipment, methods of operation, and techniques to avoid hazards to people and property and to prevent pollution of the environment.

(b) *Personnel training requirements.* The training required for individual employees of lessees and contractors who work in the OCS shall be based upon the job function(s) the employee performs.

(1) Individuals engaged in oil, gas, or sulphur drilling operations shall be trained in well control on the basis of two job classifications as follows:

(i) Drilling floorhands (includes the conventional drilling rig positions of rotary helper and derrickman or their equivalent) shall be trained in well control in accordance with the provisions of paragraphs (a) and (b) of § 250.212, Drilling well-control training, of this part, and

(ii) Drilling supervisors (includes the conventional drilling rig positions of driller, toolpusher, and operator's representative or their equivalent) shall be trained in well control in accordance with the provisions of paragraphs (c) through (f) of § 250.212, Drilling well-control training, of this part.

(2) Individuals engaged in oil or gas well-completion or well-workover operations after the time the production casing is set, cemented, and pressure tested shall be trained in well control on the basis of the job classifications in this paragraph (b)(2) (i) and (ii). Individuals engaged in well-completion operations prior to or during the initial installation of the tree may be trained in accordance with paragraph (b)(1) of this section in lieu of receiving the well-completion and well-workover well-control training required by this paragraph (b)(2). Killing a well for the purpose of conducting a well-workover operation shall be considered to be part of the well-workover operation and shall be performed under the direction of personnel trained in accordance with paragraph (b)(2)(ii), (b)(2)(iii), or (b)(3) of this section.

(i) Well-completion and well-workover floorhands (includes floorhands and employees in an equivalent job classification as well as the conventional drilling rig positions of rotary helper and derrickman or their equivalent) performing well-completion or well-workover operations without the tree in place shall be trained in well control in accordance with the provisions of paragraphs (a) and (b) of § 250.213, Well-completion and workover well control, of this part.

(ii) Well-completion and well-workover supervisors (includes well-completion and well-workover supervisors and employees in an equivalent job classification as well as the conventional drilling rig positions of driller, toolpusher, and operator's representative or their equivalent) performing well-completion or well-workover operations without the tree in place shall be trained in well control in accordance with the provisions of paragraphs (c) through (f) of § 250.213, Well-completion and workover well control, of this part.

(iii) At least one member of each well-servicing crew shall be trained in well control in accordance with the provisions of paragraphs (g) through (i) of § 250.213, Well-completion and workover well control, of this part, and shall be present in the immediate area of the work at all times that snubbing, coil-tubing, or small-tubing operations are conducted in the OCS. For the purpose of this subpart, well servicing consists of snubbing, coil-tubing, and small-tubing operations.

(3) Personnel engaged in oil or gas production operations and classified as production safety system personnel (includes personnel engaged in the installation, repair, testing, maintenance, or operation of surface or subsurface safety devices and the individual on the platform who has overall responsibility for production operations) shall be trained in accordance with the provisions of § 250.214, Production safety system training, of this part.

(c) *Training records.* A training organization that provides training for lessee and contractor employees identified in paragraph (b) of this section shall maintain a record of the training provided each trainee. The training organization shall provide each trainee who successfully completes a training course the documentation prescribed in this subpart. A copy of that documentation shall be in the possession of the employee while on the job or otherwise maintained at the job site. A training organization shall not provide documentation of successful completion of a refresher course, unless the training organization determines the date of the trainee's most recent basic or advanced course and most recent refresher course to verify that the trainee is eligible to extend his/her qualifications through completion of a refresher course.

(d) *Relief assignments.* Any individual who temporarily works in place of another individual who has a job classification covered in paragraph (b) of this section shall have successfully completed the training requirements of that job classification, unless the temporary service is performed under the direct supervision of an individual onsite who has successfully completed the required training for that job classification.

(e) *Changes in certification.* A change in certification for a different job classification can only be accomplished through the successful completion of an approved basic or advanced course in well control designed to qualify the individual in the new job classification. An individual who has successfully completed a training program for a given job classification cannot change his/her certificate of training (e.g., from well-completion and well-workover supervisor to drilling supervisor or from surface to subsea) by successfully completing a refresher course.

(f) *Frequency of training.* (1) A basic or advanced course in well control or production safety systems must be successfully completed within 60 days before or after the fourth anniversary of the date of the individual's last successful completion of a basic or advanced course.

(2) Individuals are required to successfully complete an approved refresher well-control course within 60 days before or after the first, second, and third anniversary of the date of the individual's last successful completion of a basic or advanced course in well control.

(3) Individuals are required to successfully complete an approved refresher course in production safety systems within 60 days before or after the second anniversary of the date of the individual's last successful completion of a basic or advanced course in production safety systems.

(4) A worker who does not complete a refresher course during the specified period in paragraphs (f)(2) and (f)(3) of this section shall successfully complete a basic course or an advanced course to recertify.

(g) *Other training requirements.* Well-control training requirements for individuals who work in OCS drilling, well-completion, and well-workover operations and production safety system training for individuals who work with production safety systems are detailed in this subpart. Additional training requirments are specified in other subparts and include the following:

(1) Pollution control—subpart C, § 250.43 of this part,

(2) Crane operation—subpart D, § 250.51(g) of this part,

(3) Welding and burning—subpart D, § 250.52(b) of this part, and

(4) Hydrogen sulfide training—subpart D, § 250.67(h)(2) of this part.

(h) *Departures.* The MMS may approve departures from these requirements when it is determined that such departure will not result in a reduction of the qualifications of personnel and that the departure is necessary due to unavoidable circumstances that make compliance with the requirements infeasible or impractical.

§ 250.211 Approval of training program.

(a) *Application for approval.* Training programs and implementation plans for basic, advanced, and refresher courses in well control and production safety systems shall be submitted to the Chief, Inspection and Enforcement Division. Training programs submitted by training organizations for approval and certification shall comply with the following:

(1) Two copies of a comprehensive detailed presentation of the proposed training program and implementation plan shall be submitted in looseleaf binder format.

(2) All proposed training programs and plans, together with related correspondence, shall be mailed to the Chief, Inspection and Enforcement Division; Minerals Management Service; Mail Stop 4800; 381 Elden Street; Herndon, Virginia 22070–4817.

(3) The proposed training program and plan shall include the following:

(i) A training manual that is representative of the subject matter to be addressed during the course as it will be taught by the training organization.

(ii) An implementation plan furnishing the information described in this paragraph and either paragraph (c), (d), or (e) of this section.

(iii) A cross-reference relating elements described in the training manual to the requirements of this subpart.

(4) Courses submitted for approval shall be identified with regard to course name, type, and options. A course required for drilling supervisors is designated as a "well-control course for drilling operations," a course for well-completion and well-workover supervisors performing operations with the tree removed is designated as a "well-control course for well-completion and well-workover operations," a course for well-servicing personnel is designated as a "well-control course for well-servicing operations," and a course for personnel engaged in oil or gas production operations and classified as production safety system personnel is designated as a "production safety system course." Course types are basic, advanced, and refresher. Course options for well-control courses for drilling operations and for well-completion and well-workover operations are "surface" and "subsea." Course options for well-control courses for well-servicing operations are "coil tubing", "small tubing", "snubbing", "coil tubing and small tubing", "coil tubing and snubbing", "small tubing and snubbing," and "small tubing, coil tubing, and snubbing."

(i) Well-control courses for drilling operations shall include a total number of hours equal to or greater than the hours listed below. The total number of hours shall include, on a per student basis, hours of instruction on subject matter covered in the approved course curriculum, hours of simulator time, and time for completion of test.

Type	Option	Minimum total hours
Basic or advanced	Surface	32
Basic or advanced	Subsea	36
Refresher	Surface	8

Type	Option	Minimum total hours
Refresher	Subsea	8

(ii) Well-control courses for well-completion and well-workover operations shall include a total number of hours equal to or greater than the hours listed below. The total number of hours shall include, on a per student basis, hours of instruction on subject matter covered in the approved course curriculum, hours of simulator time, and time for completion of test.

Type	Option	Minimum total hours
Basic or advanced	Surface	32
Basic or advanced	Subsea	36
Refresher	Surface	8
Refresher	Subsea	8

(iii) Well-control courses for well-servicing operations shall include a total number of hours equal to or greater than the hours listed below. The total number of hours shall include, on a per student basis, hours of instruction on subject matter covered in the approved course curriculum and time for completion of test.

Type	Option	Minimum total hours
Basic or advanced	Coil tubing, small tubing, or snubbing	14.0
Basic or advanced	Coil tubing and small tubing, coil tubing and snubbing, or small tubing and snubbing	19.0
Basic or advanced	Coil tubing, small tubing, and snubbing	24.0
Refresher	Coil tubing, small tubing, or snubbing	4.0
Refresher	Coil tubing and small tubing, coil tubing and snubbing, or small tubing and snubbing	5.5
Refresher	Coil tubing, small tubing, and snubbing	7.0

(iv) Courses that combine a basic or advanced course in well control for drilling operations with a basic or advanced course in well control for well-completion and well-workover operations for either a surface or subsea option shall include a total number of hours equal to or greater than the hours listed below. The total number of hours shall include, on a per student basis, hours of instruction on subject matter covered in the approved course curriculum, hours of simulator time, and time for completion of test.

Type	Option	Minimum total hours
Basic or advanced	Surface	44
Basic or advanced	Subsea	48
Refresher	Surface	12
Refresher	Subsea	12

(v) Courses that combine a course in well control for drilling operations or a course in well control for well-completion and well-workover operations for the surface option with a course in well control for well servicing shall include a total number of hours equal to or greater than the hours listed below. The total number of hours shall include, on a per student basis, hours of instruction on subject matter covered in the approved course curriculum, hours of simulator time, and time for completion of test. Basic or advanced courses for the subsea option shall include 4 hours more than indicated for surface courses. Refresher courses for the subsea option shall include a minimum number of hours as required for surface refresher courses.

Type	Option	Minimum total hours
Basic or advanced	Coil tubing, small tubing, or snubbing	43
Basic or advanced	Coil tubing and small tubing, coil tubing and snubbing, or small tubbing and snubbing	48
Basic or advanced	Coil tubing, small tubing, and snubbing	53
Refresher	Coil tubing, small tubing, or snubbing	10
Refresher	Coil tubing and small tubing, coil tubing and snubbing, or small tubing and snubbing	11
Refresher	Coil tubing, small tubing, and snubbing	12

(vi) Courses that combine a course in well control for drilling operations (surface option), a course in well control for well-completion and well-workover operations, and a course in well control for well servicing shall include a total number of hours equal to or greater than the hours listed below. The total number of hours shall include, on a per student basis, hours of instruction on subject matter covered in the approved course curriculum, hours of simulator time, and time for completion of test. Basic or advanced courses for the subsea option shall include an additional 4 hours. Refresher courses for the subsea option need not add additional hours.

Type	Option	Minimum total hours
Basic or advanced	Coil tubing, small tubing, or snubbing	55
Basic or advanced	Coil tubing and small tubing, coil tubing and snubbing, or small tubing and snubbing	60
Basic or advanced	Coil tubing, small tubing, and snubbing	65
Refresher	Coil tubing, small tubing, or snubbing	14
Refresher	Coil tubing and small tubing, coil tubing and snubbing, or small tubing and snubbing	15
Refresher	Coil tubing, small tubing, and snubbing	16

(vii) Courses in production safety systems shall include a total number of hours equal to or greater than the hours listed below. The total number of hours shall include, on a per student basis, hours of instruction on subject matter covered in the approved course curriculum, hours of hands-on training, and time for completion of test.

Type	Minimum total hours
Basic or advanced	32
Refresher	8

(viii) Courses that combine a course in production safety systems with any other course shall include, on a per student basis, a total number of hours of instruction on subject matter covered in the approved course curriculum, hours of hands-on training, and time for completion of test equal to or greater than the number of hours required for the appropriate course in production safety systems plus the number of hours required for the course with which the course in production safety systems is being combined.

(5) Course participants who are absent from any part of a course shall make up the missed portion within 7 days of the end of the course and before a written or simulator test is administered and before a certificate of successful completion is awarded. A student who missed a total of 12 hours or more of instruction for a basic or advanced course or 4 hours or more of instruction for a refresher course shall repeat and successfully complete the entire course.

(6) Classes shall contain no more than 21 candidates per lecture. A record of each candidate's attendance, including makeup actions where a part of a course is missed, shall be maintained by the instructor.

(7) Training organizations shall furnish MMS onsite evaluators with a copy of the training program and implementation plan approved by MMS for their use during an onsite evaluation.

(8) A schedule of the courses that will be offered by a training organization shall be submitted to MMS after a training program is approved. A new course schedule shall be submitted at least annually thereafter. The schedule shall include the name of the course, class date, type of course, and location where the course will be taught. The MMS shall be given advance notice of any changes to the schedule.

(9) Training organizations shall retain records in a readily accessible filing system for a period of 5 years starting with the date a training program and plan are approved, (e.g., at the end of the fifth year, a training organization may destroy the records of the first year, and at the end of the sixth year, a training organization may destroy the records of the second year). The records to be retained are as follows:

(i) Complete and current training program.

(ii) Complete and current technical training manual.

(iii) Daily attendance record.

(iv) Student's written test and retest.

(v) Evaluation of student's simulator test and retest.

(vi) Student's completed "kill sheet" for simulator test and retest.

(vii) For refresher course, verification that the student has successfully completed basic, advanced, and refresher courses as required.

(viii) Copy of each student's certificate.

(ix) Copy of each class roster.

(x) Copies of notification to MMS of all schedules and schedule changes.

(10) Training programs shall be approved for a maximum of 4 years.

(11) For basic courses, training organizations shall provide all candidates with a copy of the training manual for use and future reference by the candidates. For refresher courses and for advanced courses, training organizations shall provide each candidate with handouts necessary to update the manuals the candidates has as a result of previous training courses.

(12) A notification letter shall be sent to the Chief, Offshore Inspection and Enforcement Division, at the address shown in paragraph (a)(2) of this section within 30 days of course completion informing MMS of each candidate who successfully completed the approved course. This letter shall contain the following information for each candidate:

(i) Name of training organization,

(ii) Course location (e.g., Thibodeaux, Louisiana),

(iii) Candidate's full name,

(iv) Name of course (e.g., Drilling Well Control or Well Servicing),

(v) Course type (i.e., basic, advanced, or refresher training),

(vi) Options (e.g., subsea BOP stack qualification),

(vii) Date candidate successfully completed course,

(viii) Name(s) of instructor(s) teaching the course and the portions of the course taught by each instructor,

(ix) Either a candidate's social security number or an MMS-issued identification number,

(x) Candidate's employer,

(xi) Actual job title of candidate,

(xii) Job classification for which certification is awarded,

(xiii) Test score for each candidate awarded a certificate. For combination courses, tests shall have a separate test element for each course designation and for each course option. Each test element shall be scored separately, and all element scores shall be submitted. For example, if a student takes a course for subsea drilling well control and well completion and well workover, test scores would be submitted for the drilling portion of the test, the well-completion and well-workover portion of the test, and the subsea portion of the test,

(xiv) Training organization name and date of last basic training course or advanced course for the same job category (i.e., drilling, well completion and well workover, well servicing, or production safety systems) attended by candidate, and

(xv) Training organization name and date of last refresher course taken by candidate.

(b)(1) Courses approved under MMSS–OCS–T 1, Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations, prior to February 25, 1991, are deemed approved as drilling well-control training under this subpart until the expiration of the existing approval. However, individuals completing courses approved under MMSS–OCS–T 1 will only become certified for the applicable job classifications for which the course was approved. For example, an individual completing a driller's course approved under MMSS–OCS–T 1 would not be qualified as a toolpusher or operator's representative without first taking the appropriate course approved under MMSS–OCS–T 1 or taking a drilling supervisor's course approved under this subpart.

(2) Applications for recertification of courses shall be submitted at least 90 days prior to the fourth anniversary of the effective date of the program approval and shall state the changes, additions, or deletions, if any, to the previously approved training program course material, curriculum, and implementation plan.

(c) *Basic course.* Training organizations applying for approval and certification for a basic course shall submit a proposed course training program and implementation plan that addresses each of the following:

(1) A curriculum outline describing subject matter content in relation to the requirements of these regulations. The

outline submitted shall be similar to the format presented below:

Job Classification
First Day—(Number of Instructional Hours)
Subject X—5 hours
Detail A
Detail B
Detail C
Subject Y—3 hours
Detail D
Subject Z—2 hours
Detail E
Detail F
Second Day—(etc.)

(2) The name(s) and qualifying credentials of instructor(s) including education and experience (both work experience and teaching experience) and the portions of the course each is qualified to teach.

(3) The mailing and street address of the facility where training records will be maintained, the street address and directions to the training facility, and a description of the training facility, including identification of the lecture area, the simulator area, and a description of how the simulator area will be separate from the lecture area.

(4) Material presentation method (lecture, video, filmstrip, etc.) indicating the amount and approximate percentage of overall instructional time that each method of presentation will use as shown in the following example:

(i) Percentage of time by presentation method:

Lecture—70 percent
Video tape—10 percent
Filmstrip—10 percent
Simulator—10 percent.

(ii) Amount of time by method of presentation:

Subject X—4-hour lecture plus 1-hour video tape,
Subject Y—2-hour lecture plus 1-hour filmstrip.

(5) A narrative description of the testing procedures (including a copy of a sample written test(s) to be given to candidates in each job classification). Testing procedures shall meet the following criteria:

(i) Take-home tests shall not be permitted.

(ii) A candidate must correctly answer at least 70 percent of all test questions of each testing element to receive a passing grade. A trainee who receives less than a passing grade on one or more testing elements may be considered to have passed those course elements or options for which the trainee received passing grades. For example, a student who is seeking certification in drilling well control, well-completion and well-workover well control, and well servicing and receives grades of 70 percent or above on the drilling well-control portion of the test and the well-completion and well-workover portion of the test but receives a grade below 70 percent on the well-servicing portion of the test, would receive certification in drilling well control and well-completion and well-workover well control only.

(iii) Tests shall be given for each area of training.

(iv) Tests shall be nonrepetitive and confidential. All test results shall be retained in the student's file.

(v) A retest may be given to a candidate provided that the retest is accomplished within 48 hours of the initial test. Questions or problems used to retest a candidate shall be different from but of comparable difficulty to the questions and problems used in the original test. If a candidate fails to answer correctly at least 70 percent of all questions and problems on a retest, the candidate must repeat and successfully complete the entire basic course before he/she receives a certificate of successful completion.

(6) A copy of proposed handouts, materials, or manuals to be provided and retained for use and future reference by the candidates. These combined reference materials shall form a student's complete training manual.

(7) A copy of the proposed certificate of successful completion designed to include the following:

(i) Candidate's full name,

(ii) Either a candidate's social security number or an MMS-issued identification number,

(iii) Name of the training organization,

(iv) Course name (e.g., Basic Course in Drilling Well Control),

(v) Option (e.g., subsea BOP stack qualification),

(vi) Date of successful completion,

(vii) Job classification for which certificate is awarded (e.g., drilling supervisor), and

(viii) For refresher courses, the date of most recent successful completion of basic course or advanced course for which the refresher course is given.

(8) The applicant shall also state the special methods that will be used to instruct and test those individual candidates who are believed to be qualified but who respond poorly to conventional education and testing techniques. The special methods may include, but need not be limited to, oral assistance during testing and/or tutorial assistance.

(d) *Advanced course.* Training organizations applying for approval and certifciation for an advanced course shall submit a proposed course program and implementaiton plan that includes the information identified in paragaph (c) of this section for a basic course and any additional material proposed for inclusion in the course. The additional material may include new or advanced concepts and techniques, case studies, or other material. Testing requirements for an advanced course are the same as for a basic course.

(e) *Refresher course.* Training organizations applying for approval and certification for a refresher course shall submit a proposed training program and implementation plan that addresses each of the following:

(1) A curriculum outline describing subject matter content in relation to the requirements of these regulations.

(2) The name(s) and qualifying credentials of instructors including education and experience (both work experience and teaching experience) and the portions of the course each is qualified to teach.

(3) The mailing and street address of the facility where training records will be maintained, the street address and directions to the training facility, and a description of the training facility, including identification of the lecture area and the simulator area, and a description of how the simulator area will be separated from the lecture area.

(4) Material presentation method (lecture, video, filmstrip, etc.) indicating the amount of time that will be used for each method of presentation.

(5) A copy of the proposed handouts, materials, or manuals to be provided and retained for use and future reference by the candidates. These combined reference materials shall form the complete refresher training manual. Submission of the refresher training maual is not required for training organizations that are already approved and certified to teach a basic course, provided the refresher manual includes the same material approved for the training manual for the basic course.

(6) A copy of proposed certificate of successful completion including the following:

(i) Candidate's full name,

(ii) Either a candidate's social security number or an MMS-issued identification number,

(iii) Name of traning organization,

(iv) Course name (e.g., Refresher Course in Drilling Well Control),

(v) Option (e.g., subsea BOP stack qualification),

(vi) Date of successful completion, and

(vii) Job classification for which certificate is awarded (e.g., drilling supervisor).

(f) Training organizations are subject to announced or unannounced audits.

§ 250.212 Drilling well-control training.

(a) *Floorhands training.* Floorhands engaged in drilling operations in the OCS shall be trained in well control in accordance with the following criteria:

(1) Floorhands shall receive general instructions on BOP equipment and procedures consistent with the type of BOP system, procedures utilized on the drilling rig upon which a floorhand is employed, and a general discussion of pollution prevention and waste disposal with emphasis on its relation to well control. Instructions to floorhands shall include the purpose, operation, and general care for the following:

(i) Annular BOP with and without diverter system,

(ii) Diverter system,

(iii) Ram-type BOP,

(iv) Accumulator system,

(v) Drill string inside BOP,

(vi) Drill-string safety valve,

(vii) Kelly cock,

(viii) Choke manifold,

(ix) Degasser, and

(x) Adjustable choke.

(2) In addition to the above, floorhands shall receive instructions on the purpose, operation, and general care of the following auxiliary equipment:

(i) Mud-pit level indicator,

(ii) Mud-volume measuring device,

(iii) Mud-return indicator,

(iv) Gas detector,

(v) Mud-gas separator, and

(vi) Trip tank.

(3) Floorhands shall receive general instructions on well-control operations and hands-on training at the job site for activities such as operation of the choke manifold, stand pipe, and mud-room valves, which require settings for well-control operations different from those used in normal drilling operations.

(4) Floorhands shall receive general instructions on the care, handling, and characteristics of drilling and completion fluids including:

(i) Density,

(ii) Viscosity,

(iii) Fluid loss,

(iv) Salinity,

(v) Gas cutting, and

(vi) Procedure for increasing density.

(5) Floorhands shall receive general instructions on warning signals that indicate that a kick is occurring or about to occur or conditions that can lead to a kick, including the following:

(i) Gain in pit volume,

(ii) Increase in return fluid-flow rate,

(iii) Hole not taking proper amount of fluid during trips,

(iv) Well flowing with pump shut down,

(v) Sloughing shale and its appearance at the surface,

(vi) Drilling rate change,

(vii) Change in salinity of drilling fluid,

(viii) Change in flow properties of drilling fluid, and

(ix) Trip, connection, and background gas changes.

(b) *Qualification procedures for floorhands.* No floorhand shall participate in drilling operations in the OCS for more than 6 months unless the following qualifications are met:

(1) A floorhand shall successfully complete training in well control for floorhands that meets the criteria set forth in paragraph (a) of this section. Documented evidence of each successfully completed element of training shall be maintained at the job site.

(2) A floorhand shall successfully complete a qualifying test consisting of participation in a well-control drill at the job site carried out within the time limit prescribed. The time required for a floorhand to carry out his/her responsibility during the well-control drill shall be entered on the driller's log, and appropriate documentation shall be furnished to the employee.

(3) To maintain qualification, a floorhand must participate in well-control drills, as prescribed in subpart D, § 250.58, of this part. The date and time required to complete each drill shall be recorded on the driller's log.

(4) A training manual containing instructional material on the subjects described in paragraph (a) of this section shall be provided to floorhands for their use and retention for future reference.

(c) *Basic well-control course for drilling supervisors.* Individuals who work as a drilling supervisor in drilling operations in the OCS shall be trained in well control for drilling operations in accordance with the following:

(1) A candidate shall receive instructions on all applicable Government regulations that pertain to the work with regard to well-control operations and BOP equipment. Copies of the regulations or abstracts of pertinent provisions shall be furnished to the candidate. This material shall be kept current so that it reflects the latest revisions or additions to Government requirements. At a minimum, these instructions shall cover the following subject matter:

(i) Drilling procedures including a general discussion of how field drilling rules may modify other requirements,

(ii) Wellbore plugging and abandonment, and

(iii) A general discussion of pollution prevention and waste disposal with emphasis on its relation to well control.

(2) Candidates shall receive instructions on the care, handling, and characteristics of drilling and completion fluids including the following:

(i) Density,

(ii) Viscosity,

(iii) Fluid loss,

(iv) Salinity,

(v) Gas cutting, and

(vi) Procedure for increasing density.

(3) Candidates shall receive instructions on the major causes of an uncontrolled flow from a well including the following:

(i) Failure to keep the hole full,

(ii) Swabbing effect of pulling the pipe,

(iii) Loss of circulation,

(iv) Insufficient density of drilling fluid,

(v) Abnormally pressured formations, and

(vi) Effect of too rapid lowering of pipe in the hole.

(4) Candidates shall receive instructions on the importance of measuring the volume of fluid required to fill the hole during the trips and methods for measuring and recording hole-fill volumes. These instructions shall include the importance of filling the hole as it relates to shallow-gas conditions.

(5) Candidates shall receive instructions on the warning signals that indicate that a kick is occurring or about to occur and on conditions that can lead to a kick including the following:

(i) Gain in pit volume,

(ii) Increase in return fluid-flow rate,

(iii) Hole not taking proper amount of fluid during trips,

(iv) Drilling rate change,

(v) Decrease in circulating pressure or increase in pump strokes,

(vi) Trip, connection, and background gas change,

(vii) Gas-cut mud,

(viii) Water-cut mud or chloride concentration change,

(ix) Sloughing shale and its appearance at the surface,

(x) Well flowing with pump shut down, and

(xi) Change in flow properties of drilling fluid.

(6) Candidates shall receive instructions on the correct procedures for shutting in a well for well-control purposes, including use of the BOP system, the choke manifold, and/or the diverter system for well control. These instructions shall include the sequential steps to be followed.

(7) Candidates shall receive instructions on one of the following constant bottomhole pressure methods

of well control, including those conditions that may be unique to either a surface or subsea BOP stack:

(i) Driller's method,

(ii) Wait-and-weight method,

(iii) Concurrent (circulate and weight) method, and

(iv) Other applicable constant bottomhole pressure methods.

(8) Candidates shall participate in well-control exercises using a well simulator or a model well in accordance with paragraph (f) of this section. The simulator shall be suitable for modeling of drilling well-control problems.

(9) Candidates shall be instructed on calculations used in well control and the basis for their use including the following:

(i) Fluid-density increase required to control fluid flow into wellbore,

(ii) Conversion between fluid density and pressure and the importance of that conversion in understanding danger of formation breakdown under the pressure caused by the fluid column particularly when setting casing in shallow formation,

(iii) Calculation of equivalent pressures at the casing seat with emphasis on the importance of casing seat depth,

(iv) Drop in pump pressure as fluid density increases during well-control operations; relationships between pump pressure, pump rate, and fluid density, and

(v) Pressure limitations on casings.

(10) Candidates shall receive instructions on unusual well-control situations, including the following:

(i) Drill pipe is off bottom,

(ii) Drill pipe is out of the hold,

(iii) Lost circulations occurs,

(iv) Drill pipe is plugged,

(v) There is excessive casing pressure, and

(iv) There is a hole in drill pipe.

(11) Candidates shall receive instructions on the following:

(i) Controlling shallow gas kicks, and

(ii) Use of diverters.

(12) Candidates intending to receive subsea well-control qualification shall receive instructions on the special problems in well control when drilling with a subsea BOP stack including:

(i) Choke line friction determinations,

(ii) Use of marine risers,

(iii) Riser collapse,

(iv) Removal of trapped gas from the BOP stack after controlling a well kick, and

(v) "U" tube effect as gas hits the coke line.

(13) Candidates shall receive instructions on the installation, operation, maintenance, and testing of BOP and diverter system.

(14) Candidates shall receive instructions on the purpose, installation, operation, and general maintenance of the following auxiliary equipment:

(i) Fluid-pit level indicator,

(ii) Fluid-volume measuring device,

(iii) Fluid-return indicator,

(iv) Gas detector,

(v) Trip tank,

(vi) Gas separator,

(vii) Degasser, and

(viii) Adjustable choke.

(15) Candidates shall receive instructions on the limitations of the various items of equipment that will be subjected to pressure and/or wear.

(16) Candidates shall receive instructions on the mechanics involved in various well-control situations, including the following:

(i) Gas-bubble migration and expansion,

(ii) Bleeding volume from a shut-in well during gas migration,

(iii) Excessive annular surface pressure,

(iv) Differences between a gas kick and a salt water and/or oil kick,

(v) Special well-control techniques (such as, but not limited to, barite plugs and cement plugs),

(vi) Procedures and problems involved when experiencing lost circulation in well-control operations,

(vii) Procedures and problems involved when experiencing a kick while drilling in a hydrogen sulfide (H_2S) environment, and

(viii) Procedures and problems involved when experiencing a kick during snubbing, coil-tubing, or small-tubing operations.

(17) Candidates shall receive instructions on organizing and directing a well-killing operation and shall subsequently direct such an operation using a model well or simulation device.

(18) Candidates shall receive instructions on the purpose and usage of BOP closing units, including the following:

(i) Charging procedures that include precharge and operating pressure,

(ii) Fluid volumes (usable and required),

(iii) Fluid pumps, and

(iv) Maintenance that includes charging fluid and inspection procedures.

(19) Candidates shall receive stripping and snubbing operations instructions on the use of the entire BOP system for working pipe in or out of a wellbore that is under pressure.

(20) Candidates shall receive instructions for detecting entry into abnormally pressured formations and the accompanying warning signals, including the following:

(i) Penetration rate change,

(ii) Shale-density change,

(iii) Mud-chloride content change,

(iv) Shale-cutting characteristics, and

(v) Trip, connection, and background gas changes.

(21) Candidates shall receive instructions on the various types of completion fluids utilized and potential problems caused by their use in well control, including the following:

(i) Gases,

(ii) Water-base system,

(iii) Oil-base system, and

(iv) Packer fluids.

(22) Candidates shall receive instructions on well-completion/well-control problems, including the following:

(i) Multiple completions,

(ii) Running a drill-stem test,

(iii) Perforating, and

(iv) Other completion operations.

(23) The course outline shall indicate portions of the course that will not be taught to students intending to receive only surface well-control qualification.

(d) *Refresher well-control course for drilling supervisors.* Individuals who work as drilling supervisors in drilling operations in the OCS shall successfully complete a refresher course in well control for drilling operations within 60 days before or after the first, second, and third anniversary of the date of the individual's last successful completion of a basic or advanced course in well control for drilling operations. A refresher course in well control for drilling operations shall include the following:

(1) Candidates shall receive instructions in the most recent improvements in equipment or methods for well control and any applicable Government regulations that pertain to well-control operations and equipment.

(2) Candidates shall receive instructions on at least one constant bottomhole pressure method of well control.

(3) Candidates shall participate in simulator practice problems in well control, simulating a surface BOP stack or a subsea BOP stack, and at least one simulator well-control test problem. Candidates qualifying for subsea well control shall be assigned a subsea simulator test problem.

(e) *Qualification procedures for drilling supervisors.* No individual employed as a drilling supervisor shall engage in operations in the OCS as a drilling supervisor unless the following qualifications are met:

(1) The individual shall have successfully completed the training requirements in paragraph (c) of this

section and passed written tests and hands-on demonstrations to verify that the individual has a thorough understanding of the well-control equipment, techniques, and principles outlined in paragraph (c) of this section and is qualified to organize and direct a well-control procedure during drilling operations. Evidence of the successful completion of training requirements shall be maintained at the job site.

(2) The individual shall maintain the qualification by the following:

(i) Successful completion of an approved basic well-control course for drilling supervisors or an advanced well-control course for drilling supervisors at least once every 4 years; and

(ii) Successful completion of a refresher well-control course for drilling supervisors within 60 days before or after the first, second, and third anniversary of the date of the individual's last successful completion of a certified basic or advanced well-control course for drilling supervisors.

(f) *Submission of well-control training programs for drilling supervisors.* Training programs and implementation plans for well-control training for drilling supervisors shall be submitted to the Chief, Offshore Inspection and Enforcement Division, at the address shown in paragraph (a)(2) of this section for approval in accordance with § 250.211 of this subpart and the following additional requirements:

(1) The training program and plan shall contain the following specific information on the simulator or test well:

(i) Simulator or test well capability for surface and, if applicable, subsea drilling well-control training,

(ii) Capability to stimulate lost circulation and secondary kicks, and

(iii) Types of kicks that can be simulated.

(2) The training program and implementation plan shall include at least two simulator practice problems with the candidate's position rotated as part of a team. Teams working on the simulator practice problem shall consist of no more than three members.

(3) The training program and implementation plan shall stipulate that each candidate shall satisfactorily and completely perform the hands-on qualification test which consists of a surface BOP stack or a subsea BOP stack simulation. Teams working on the hands-on qualification test shall consist of no more than three members. Candidates qualifying for subsea well control shall be considered qualified for either surface or subsea operations.

(i) All students shall demonstrate proficiency in the hands-on test in the following areas:

(A) Ability to determine slow-pump rates,

(B) Ability to recognize warning signs of a kick,

(C) Ability to shut in the well,

(D) Ability to complete kill sheets,

(E) Ability to properly initiate kill procedures,

(F) Ability to maintain constant bottomhole pressure,

(G) Ability to recognize and effectively handle unusual well-control situations,

(H) Ability to control the kick as it reaches the choke line, and

(I) Ability to determine if kill gas or fluids have been completely removed from the well.

(ii) Students qualifying for subsea option shall also demonstrate proficiency in the hands-on test in the following areas:

(A) Ability to determine choke line friction pressures for subsea BOP stacks, and

(B) Ability to discuss and demonstrate procedures such as circulating the riser and removing trapped gas in a subsea BOP stack.

(4) Any retest of a candidate must be accomplished within 48 hours of the initial test. Both hands-on and written test problems on a retest shall be different from the test problems orginally given the candidate. If the candidate fails the retest, the candidate must participate in, and successfully complete, a basic course in well-control training for drilling supervisors.

§ 250.213 Well-completion and well-workover well-control training.

(a) *Floorhands training.* After February 24, 1993, individuals in the OCS employed as floorhands, or the equivalent, shall not engage in well-completion and well-workover operations without the tree in place unless trained in well control in accordance with the following criteria:

(1) Floorhands, or employees in an equivalent job classification, shall receive general instructions on BOP equipment and procedures consistent with the type of BOP system and procedures utilized on the well-completion or well-workover rig (includes drilling rig used for well-completion operations) upon which a floorhand is employed. Instructions to floorhands or employees in an equivalent job classification shall include the purpose, operation, and general care of the following:

(i) Annular BOP,

(ii) Ram-type BOP,

(iii) Accumulator system,

(iv) Work string inside BOP,

(v) Work string safety valve,

(vi) Kelly cock,

(vii) Choke manifold,

(viii) Degasser,

(ix) Adjustable choke, and

(x) Wellhead and tree.

(2) In addition to the above, floorhands or employees in an equivalent job classification shall receive instructions on the purpose, operation, and general care of the following auxiliary equipment if present:

(i) Fluid-pit level indicator,

(ii) Fluid-volume measuring device,

(iii) Fluid-return indicator,

(iv) Gas detector,

(v) Fluid-gas separator, and

(vi) Trip tank.

(3) Floorhands or employees in an equivalent job classification shall receive general instructions on well-control during well-completion or well-workover operations, such as operation of the choke manifold, stand pipe, filling the tubing and casing with fluid to control bottomhole pressure, and removal of tree and tubing hanger.

(4) Floorhands or employees in an equivalent job classification shall receive general instructions in the care, handling, and characteristics of well-completion, well-workover, and packer fluids, including the following:

(i) Functions of a well-completion or well-workover fluid:

(A) Well killing,

(B) Cleaning out a well,

(C) Plugging back to complete in a shallower interval, and

(D) Bridging agents.

(ii) Fluid types:

(A) Gases,

(B) Water-base system,

(C) Oil-base system, and

(D) Packer fluids.

(iii) Flow properties with emphasis on the following:

(A) Density (weight) and temperature offset,

(B) Viscosity,

(C) Procedure for increasing fluid density (weight),

(D) Gas cutting,

(E) Fluid loss,

(F) Salinity,

(G) Solids content, and

(H) Caustic effect of brine and safe handling of fluids.

(5) Floorhands or employees in an equivalent job classification shall receive general instructions on warning signals that indicate that a kick is occurring or about to occur or conditions that can lead to a kick, including the following:

(i) Gain in pit volume,

(ii) Increase in return fluid-flow rate,
(iii) Hole not taking proper amount of fluid during trips,
(iv) Well flowing with pump shut down,
(v) Sloughing shale and its appearance at the surface,
(vi) Drilling rate change,
(vii) Change in salinity of drilling fluid,
(viii) Change in flow properties of drilling fluid, and
(ix) Trip, connection, and background gas changes.

(b) *Qualification procedures for floorhands.* No floorhand or employee in an equivalent job classification shall participate in well-completion or well-workover operations without the tree in place in the OCS for more than 6 months unless the following qualifications are met:

(1) Floorhands or an employee in an equivalent job classification shall successfully complete the training in well control that meets the criteria set forth in paragraph (a) of this section. Documented evidence of each successfully completed element of training shall be maintained at the job site.

(2) Floorhands or an employee in an equivalent job classification shall successfully complete a qualifying test consisting of participation in a well-control drill at the job site carried out within the time limit prescribed. The time required for a floorhand or employee in an equivalent job classification to carry out his/her responsibility during the well-control drill shall be entered on the driller's log, and appropriate documentation shall be furnished to the successful employee.

(3) To maintain qualification, floorhands or an employee in an equivalent job classification must participate in weekly well-control drills, as prescribed in §§ 250.86 and 250.106 of subparts E and F, respectively, of this part. The date and time required for the candidate to complete each drill shall be recorded in the operations log.

(4) A training manual containing instructional material on the subjects described in paragraph (a) of this section shall be provided to floorhands and employees in an equivalent job classification for their use and retention for future reference.

(c) *Basic well-completion and well-workover well-control training course for supervisors.* After February 24, 1993, individuals in the OCS employed as well-completion or well-workover supervisors shall not engage in well-completion or well-workover operations without the tree in place unless trained in well control for well-completion and well-workover operations in accordance with the following:

(1) A candidate shall receive instructions on all applicable Government regulations that pertain to the work in regard to well-completion and well-workover well-control operations and BOP equipment. Copies of current regulations or abstracts of pertinent provisions shall be furnished to the candidate. This material shall be kept current so that it reflects the latest revisions or additions to Government regulations. At a minimum, these instructions shall cover the following subject matter:

(i) Well-completion and well-workover requirements contained in subparts E and F of this part 250,
(ii) Wellbore plugging and abandonment, and
(iii) A general discussion of pollution prevention and waste disposal with emphasis on its relation to well control.

(2) Candidates shall receive instructions on the care, handling, and characteristics of well-completion, well-workover, and packer fluids, including the following:

(i) Functions of a well-completion and well-workover fluid:
(A) Well control (killing),
(B) Cleaning out a well,
(C) Plugging back to complete a shallower interval, and
(D) Bridging agents.
(ii) Fluid types:
(A) Gases,
(B) Water-base system,
(C) Oil-base system, and
(D) Packer fluids.
(iii) Fluid properties with emphasis on the following:
(A) Density (weight) and temperature offset,
(B) Viscosity,
(C) Procedure for increasing fluid density (weight),
(D) Gas cutting,
(E) Fluid loss,
(F) Salinity,
(G) Solids content,
(H) Gel strength,
(I) Crystallization, and
(J) Caustic effect of brine and safe handling of fluids.

(3) Candidates shall receive instructions on the major causes of an uncontrolled flow from a well, including the following:

(i) Failure to keep the hole full,
(ii) Swabbing effect of pulling the pipe,
(iii) Loss of circulation,
(iv) Insufficient density of well-completion or well-workover fluid,
(v) Abnormally pressured formations, and
(vi) Effect of too rapid lowering of pipe in the hole.

(4) Candidates shall receive instructions on the importance of measuring the volume of fluid required to fill the hole during trips and methods for measuring and recording hole-fill volumes.

(5) Candidates shall receive instructions on the warning signals that indicate that a kick is occurring or about to occur and on conditions that can lead to a kick, including the following:

(i) Gain in pit volume,
(ii) Increase in return fluid-flow rate,
(iii) Hole not taking proper amount of fluid during trips,
(iv) Drilling rate change,
(v) Decrease in circulating pressure or increase in pump strokes,
(vi) Trip, connection, and background gas change,
(vii) Gas-cut mud,
(viii) Water-cut mud or chloride concentration change,
(ix) Sloughing shale and its appearance at the surface,
(x) Well flowing with pump shut down, and
(xi) Change in flow properties of drilling fluid.

(6) Candidates shall receive instructions on the correct procedures for shutting in a well for well-control purposes, including use of the BOP system and the choke manifold for well control. These instructions shall include the sequential steps to be followed.

(7) Candidates shall receive instructions on one of the following constant bottomhole pressure methods for well control, including those conditions that may be unique to either a surface or subsea BOP stack.

(i) Driller's method,
(ii) Wait-and-weight method,
(iii) Concurrent (circulate and weight) method, and
(iv) Other applicable constant bottomhole pressure methods.

(8) Candidates shall participate in well-control exercises using well simulator or a model well in accordance with paragraph (f) of this section. The simulator shall be suitable for modeling of well-completion and well-workover well-control problems.

(9) Candidates shall be instructed on calculations used in well control and the basis for their use, including the following:

(i) Hydrostatic pressure and pressure gradient,
(ii) Fluid-density increase required to control fluid flow,
(iii) Conversion between fluid density and pressure and the importance of that conversion in understanding danger of

formation breakdown under the pressure caused by the fluid column,

(iv) Drop in pump pressure as fluid density increases during well-control operations; relationships between pump pressure, pump rate, and fluid density, and

(v) Pressure limitations on casings.

(10) Candidates shall receive instructions on unusual well-control situations which shall include, but not be limited to, the following:

(i) Work string is off bottom,

(ii) Work string is out of the hole,

(iii) Lost circulation occurs,

(iv) Work string is plugged,

(v) There is excessive casing pressure,

(vi) There is a hole in work string,

(vii) There are multiple completions in the hole (more than one zone open to well), and

(viii) There is a hole in the casing string.

(11) Candidates intending to receive subsea well-control qualification shall receive instructions on the special problems in well control when utilizing a subsea BOP stack, including the following:

(i) Use of marine risers,

(ii) Choke line friction determinations,

(iii) Riser collapse,

(iv) Removal of trapped gas from the BOP stack after controlling a well kick, and

(v) "U" tube effect as gas hits the choke line.

(12) Candidates shall receive instructions on the installation, operation, maintenance, and testing of BOP systems.

(13) Candidates shall receive instructions on the purpose, installation, operation, and general maintenance of the following auxiliary exuipment:

(i) Fluid-pit level indicator,

(ii) Fluid-volume measuring device,

(iii) Fluid-return indicator,

(iv) Gas detector,

(v) Trip tank,

((vi) Gas separator,

(vii) Degasser, and

(viii) Adjustable choke.

(14) Candidates shall receive instructions on the limitations of the various items of equipment that will be subjected to pressure and/or wear.

(15) Candidates shall receive instructions on the mechanics involved in various well-control situations, including the following:

(i) Gas-bubble migration and expansion,

(ii) Bleeding volume from a shut-in well during gas migration,

(iii) Excessive annular surface pressure,

(iv) Differences between a gas kick and a salt water and/or oil kick,

(v) Procedures and problems involved in stripping and snubbing operations with work string,

(vi) Special well-control techniques such as, but not limited to, barite plugs, cement plugs, bullheading, and lubricate and bleed,

(vii) Procedures and problems involved when experiencing lost circulation in well-completion and well-workover operations, and

(viii) Procedures and problems involved when experiencing a kick while conducting well-completion and well-workover operations in a hydrogen sulfide environment.

(16) Candidates shall receive instructions on organizing and directing a well-killing operation during well-completion and well-workover operations and shall subsequently direct such an operation using a model well or simulation device.

(17) Candidates shall receive instructions on the purpose and usage of BOP closing units, including the following:

(i) Charging procedures that include precharge and operating pressure,

(ii) Fluid volumes (usable and required),

(iii) Fluid pumps, and

(iv) Maintenance that includes charging fluid and inspection procedures.

(18) Candidates shall receive instructions on well-control problems during well-completion and well-workover operations, including the following:

(i) Killing a flow during a well-completion or well-workover operation,

(ii) Simultaneous drilling and well-completion or well-workover operations on the same platform,

(iii) Killing a producing well, and

(iv) Removing the tree.

(19) Candidates shall receive instructions in well-control equipment, including the following:

(i) Surface equipment,

(ii) Downhole tools and tubulars, and

(iii) Packers.

(20) Candidates shall receive instructions in, but are not limited to, the following topics:

(i) Reasons for well-completion or well-workover operations:

(A) Reworking a producing reservoir to control water and/or gas production,

(B) Water coning,

(C) Completing for production from a new reservoir,

(D) Completing a well in more than one reservoir,

(E) Stimulating a completion in a producing reservoir to increase production, and

(F) Repair mechanical failure.

(ii) Killing a producing well:

(A) Bullheading,

(B) Lubricate and bleed,

(C) Coil-tubing unit, and

(D) Snubbing unit.

(iii) Preparing the well for entry:

(A) Use of back-pressure valves,

(B) Surface and subsurface safety systems,

(C) Removal of tree and tubing hanger, and

(D) Installation and testing of BOP and wellhead prior to removal of back-pressure valves and tubing plugs.

(21) The course outline shall indicate portions of the course that will not be taught to students enrolled to receive only surface well-control qualification.

(d) *Refresher well-completion and well-workover well-control training course for supervisors.* Individuals who are employed as a well-completion or well-workover supervisor in OCS well-completion or well-workover operations without the tree in place in the OCS shall successfully complete a refresher course in well control for supervisors of well-completion and well-workover operations within 60 days before or after the first, second, and third anniversary of the date of the individual's last successful completion of a basic or advanced course in well control for supervisors of well-completion and well-workover operations. A refresher course in well control for well-completion and well-workover operations shall include the following:

(1) Candidates shall receive instructions in the most recent improvements in equipment or methods for well control and any applicable Government regulations that pertain to well-control operations and equipment.

(2) Candidates shall receive instructions on at least one constant bottomhole pressure method of well control.

(3) Candidates shall participate in at least one simulator practice problem in well control, simulating a surface BOP stack or a subsea BOP stack, and at least one simulator well-control test problem. Candidates attempting to qualify for subsea well control shall be assigned a subsea simulator test problem.

(e) *Qualification procedures for well-completion and well-workover supervisors.* No individual employed as a well-completion or well-workover supervisor shall engage in supervising well-completion or well-workover operations without the tree in place in the OCS unless the following qualifications are met:

(1) The individual shall have successfully completed the training

requirements in § 250.213(c) and passed written tests and hands-on demonstrations to verify that the individual has a thorough understanding of the well-control equipment, techniques, and principles outlined in paragraph (c) of this section and is qualified to organize and direct a well-control procedure during well-completion and well-workover operations. Evidence of the successful completion of these training requirements shall be maintained at the job site.

(2) The individual shall maintain the qualification by the following:

(i) Successful completion of an approved basic or advanced course for supervisors of well control for well-completion and well-workover operations within 60 days before or after the fourth anniversary of the date of the individual's last successful completion of a basic or advanced course for supervisors of well control for well-completion and well-workover operations.

(ii) Successful completion of a refresher course for supervisors of well control for well-completion and well-workover operations within 60 days before or after the first, second, and third anniversary of the date of the individual's last successful completion of a basic or advanced course for supervisors of well control for well-completion and well-workover operations.

(f) *Submission of training programs for well-completion and well-workover well-control course.* Training programs and implementation plans for well-completion and well-workover well-control courses shall be submitted to the Chief, Offshore Inspection and Enforcement Division. Training programs submitted by training organizations for approval and certification of well-completion and well-workover well-control courses shall comply with § 250.211 of this part and the following additional requirements:

(1) The training program and plan shall contain the following specific information on the simulator or test well:

(i) Simulator or test well capability for surface and, if applicable, subsea well-completion and well-workover well-control training.

(ii) Capability to simulate lost circulation and secondary kicks, and

(iii) Types of kicks that can be simulated.

(2) The training program shall include at least two practice problems with the candidate's position rotated as part of a team. Teams working on the simulator practice problem shall consist of no more than three members.

(3) The training program and implementation plan shall stipulate that each candidate shall satisfactorily and completely perform the hands-on test which consists of a surface BOP stack or a subsea BOP stack simulation. Teams working on the hands-on qualification test shall consist of no more than three members. Candidates qualifying for subsea well control shall be considered qualified for either surface or subsea operations.

(i) All students shall demonstrate proficiency in the hands-on test in the following areas:

(A) Ability to kill the well prior to removing the tree,

(B) Ability to determine slow-pump rates,

(C) Ability to recognize warning signs of a kick,

(D) Ability to shut in the well,

(E) Ability to complete kill sheets,

(F) Ability to properly initiate kill procedures,

(G) Ability to maintain appropriate bottomhole pressure,

(H) Ability to recognize and effectively handle unusual well-control situations,

(I) Ability to control the kick as it reaches the choke line, and

(J) Ability to determine if kill gas or fluids have been completely removed from the well.

(ii) Students qualifying for the subsea option shall also demonstrate proficiency in the hands-on test in the following areas:

(A) Ability to determine choke line friction pressures for subsea BOP stacks, and

(B) Ability to discuss and demonstrate procedures such as circulating the riser and removing trapped gas in a subsea BOP stack.

(4) Any retest of a candidate must be accomplished within 48 hours of the initial test. Both hands-on and written test problems on a retest shall be different from the test problems originally given the candidate. If the candidate fails the retest, the candidate must participate in, and successfully complete, a basic course in well control for well-completion and well-workover operations.

(g) *Basic well-control training course for well-servicing operations.* After February 24, 1993, well-servicing operations shall not be conducted in the OCS unless at least one member of a well-servicing crew is trained in accordance with the following requirements and is present in the immediate work area at all times when snubbing, coil-tubing, or small-tubing operations are being conducted. The trained individual need only be trained in the area of the operation that is being conducted (i.e., snubbing, coil tubing, or small tubing).

(1) A candidate shall receive instructions on all applicable Government regulations that pertain to the work with regard to well-completion and well-workover well-control operations and BOP equipment. Copies of current regulations or abstracts of pertinent provisions shall be furnished to the candidate. This material shall be kept current so that it reflects the latest revisions or additions to Government requirements. At a minimum, these instructions shall include the following:

(i) Well-completion and well-workover procedures outlined in subparts E and F of this part,

(ii) Emergency shutdown systems,

(iii) Production safety systems,

(iv) Well plugging and abandonment, and

(v) Pollution prevention and waste disposal.

(2) Candidates shall receive instructions in the care, handling, and characteristics of well-completion, well-workover, and packer fluids, including the following:

(i) Functions of a well-completion or well-workover fluid:

(A) Well control (killing),

(B) Cleaning out a well,

(C) Plugging back to complete a shallower interval, and

(D) Bridging agents.

(ii) Fluid types:

(A) Gases,

(B) Water-base system,

(C) Oil-base system, and

(D) Packer fluids.

(iii) Fluid properties with emphasis on the following:

(A) Density (weight) and temperature offset,

(B) Viscosity,

(C) Procedure for increasing fluid density (weight),

(D) Gas cutting,

(E) Fluid loss,

(F) Salinity,

(G) Solids content,

(H) Gel strength,

(I) Crystallization, and

(J) Caustic effect of brine and safe handling of fluids.

(3) Candidates shall receive instructions in well-control equipment, including the following:

(i) Surface equipment:

(A) Well-completion and well-workover equipment,

(B) BOP equipment, and

(C) Tree.

(ii) Tubulars:

(A) Tubing hanger,
(B) Back-pressure valve (threaded/profile),
(C) Landing nipples,
(D) Lock mandrels for corresponding nipples and operational procedures for each,
(E) Gas lift equipment, and
(F) Running and pulling tools operation.
(4) Candidates shall receive instructions in the following topics:
(i) Reasons for well completion and well workover:
(A) Reworking a well completion in a producing reservoir to control water and/or gas production,
(B) Completing a well for production in a new reservoir,
(C) Completing a well for production in more than one reservoir,
(D) Stimulating a well completion in a producing reservoir to increase production, and
(E) Repair mechanical failure.
(ii) Killing a producing well:
(A) Bullheading,
(B) Lubricate and bleed,
(C) Coil-tubing unit, and
(D) Snubbing unit.
(iii) Preparing the well for entry:
(A) Surface and subsurface safety systems,
(B) Removal of tree and tubing hanger, and
(C) Installation and testing of BOP and wellhead prior to removal of back-pressure valves and tubing plugs.
(iv) Procedure and problems involved when experiencing a kick while conducting well-completion or well-workover operations in an H_2S environment.
(5) Candidates shall receive instructions on the correct procedures for shutting in a well for well-control purposes, including controlling a well with the BOP system, and surface/subsurface safety system. These instructions shall include the sequential steps to be followed.
(6) Candidates intending to become qualified for snubbing operations shall receive instructions in snubbing units, including the following:
(i) Types:
(A) Rig assist, and
(B) Stand alone.
(ii) Applications:
(A) Running and pulling production or kill strings,
(B) Resetting weight on packers,
(C) Fishing for lost wireline tools or parted kill strings, and
(D) Circulating needed cement or fluid.
(iii) Equipment:
(A) Operating mechanism,
(B) Power supply,
(C) Control asembly and basket,
(D) Slip assembly,
(E) Mast and counterbalance winch, and
(F) Access window.
(iv) BOP equipment:
(A) Tree connection or flange,
(B) Rams,
(C) Spool,
(D) Traveling slips,
(E) Manifolds,
(F) Auxiliary—(full opening safety valve, inside BOP),
(G) Maintenance, and
(H) Testing.
(7) Candidates intending to become qualified for coil-tubing operations shall receive instructions in coil-tubing units, including the following:
(i) Applications:
(A) Initiating flow,
(B) Cleaning out sand in tubing, and
(C) Performing stimulation operations.
(ii) Equipment description:
(A) Coil tubing,
(B) Reel,
(C) Injection head,
(D) Control assembly, and
(E) Injector hoist.
(iii) BOP equipment:
(A) Tree connection or flange,
(B) Rams,
(C) Injector assembly, and
(D) Circulating system.
(8) Candidates intending to become qualified for small-tubing operations shall receive instructions in small-tubing units, including the following:
(i) Applications:
(A) Stimulation operations,
(B) Cleaning out sand and other obstructions in tubing, and
(C) Plugback and squeeze cementing.
(ii) Equipment description:
(A) Derrick and drawworks,
(B) Small tubing,
(C) Pumps, and
(D) Weighted-fluids facilities.
(iii) Weighted fluids.
(iv) BOP equipment:
(A) Rams,
(B) Wellhead connection, and
(C) Check valve.
(9) Candidates shall receive instructions in special tools and systems, including the following:
(i) Automatic-shutdown systems:
(A) Control points,
(B) Activator pilots,
(C) Monitor pilots,
(D) Control manifolds, and
(E) Subsurface system.
(ii) Flow-string systems:
(A) Tubing,
(B) Mandrels and nipples,
(C) Flow couplings,
(D) Blast joints, and
(E) Sliding sleeves.
(iii) Pumpdown equipment:
(A) Purpose,
(B) Applications,
(C) Requirements,
(D) Surface circulating systems,
(E) Lubricators,
(F) Entry loops, and
(G) Tree connection/flange.
(10) Candidates shall receive instructions on the limitations on the various items of equipment that will be subjected to pressure and/or wear.

(h) *Refresher well-control training course for well-servicing operations.* To maintain their qualification, individuals who are trained in well-servicing operations in the OCS shall successfully complete a refresher course in well control for well-servicing operations within 60 days before or after the first, second, and third anniversary of the date of the individual's last successful completion of a course in well control for well-servicing operations. A refresher course in well control for well-servicing operations shall contain instructions in the technological advances and improvements in equipment or methods for well control and any new Government requirements applicable to well control during snubbing, coil-tubing, and small-tubing operations in the OCS. The candidate shall also pass a written test.

(i) *Qualification procedures for well servicing.* At least one member of a well-servicing crew shall be trained in accordance with the following requirements and shall be present at all times when snubbing, coil-tubing, or small-tubing operations are being conducted. The trained individual need only be trained in the area of the operation that is being conducted (i.e., snubbing, coil tubing, or small tubing).

(1) The individual shall have successfully completed the applicable training requirements in paragraph (g) of this section and passed a written test to verify that the individual has a thorough understanding of well-control equipment, techniques, and principles outlined in paragraph (g) of this section and is qualified to organize and direct well-control activities during a snubbing, coil-tubing, or small-tubing operation. Evidence of the successful completion of required training shall be maintained at the job site. Such evidence shall indicate the area(s) for which the employee is trained (i.e., snubbing, coil tubing, and/or small tubing).

(2) The individual shall maintain the qualification by the following:

(i) Successful completion of the basic or advanced course in well control for well-servicing operations within 60 days before or after the fourth anniversary of

the date of the individual's last successful completion of a basic or advanced course in well control for well-servicing operations, and

(ii) Successful completion of a refresher course in well control for well-servicing operations within 60 days before or after the first, second, and third anniversary of the date of the individual's last successful completion of a basic or advanced course in well control for well-servicing operations.

(3) Any retest of a candidate must be accomplished within 48 hours of the initial test. Written test problems on a retest shall be different from the test problems originally given the candidate. If the candidate fails the retest, the candidate must participate in, and successfully complete, a basic course in well servicing.

(j) *Submission of training program for well servicing.* Training programs and implementation plans for well-control training for well servicing shall be submitted to the Chief, Offshore Inspection and Enforcement Division. Training programs and implementation plans submitted for approval and certification for well-servicing courses shall comply with § 250.211 of this part.

§ 250.214 Production safety system training.

(a) *Basic production safety system personnel course.* During the period between February 25, 1991, and February 24, 1993, personnel engaged in production operations shall meet the training requirements in the regulations in effect prior to February 25, 1991. For individuals who successfully complete a production safety systems course after May 31, 1988, and prior to February 24, 1993, the individual shall be considered to have completed a basic course in accordance with the requirements of this part if the course met the rules in effect at the time the course was taken. Otherwise, qualified individuals are not required to complete a refresher training course until they have completed a basic course in production safety systems approved and certified pursuant to this rule. After February 24, 1993, employees shall not engage in the installation, repair, testing, maintenance, or operation of a surface or subsurface safety device or be the individual on the platform with overall responsibility for production operations unless trained in accordance with the following:

(1) Each employee shall be familiar with oil and gas production operations and equipment.

(2) The employee shall receive instructions on all applicable Government regulations that pertain to the work with regard to production operations and surface and subsurface safety devices. Also, copies of current Government regulations or abstracts of pertinent provisions shall be furnished to the employee. These instructions shall include the following:

(i) Production safety devices,

(ii) Subsurface safety devices,

(iii) Design, installation, and operation of surface production safety equipment,

(iv) Additional production system requirements,

(v) Testing of production safety equipment and recording of the test results,

(vi) Quality assurance requirements for safety and pollution prevention equipment,

(vii) Pollution prevention and waste disposal requirements during production operations, and

(viii) General requirements for well-completion and well-workover operations (including snubbing, coil-tubing, and small-tubing units).

(3) The employee shall receive instructions on how failures or malfunctions in a system can cause abnormal conditions that must be brought under control by properly functioning safety devices.

(4) Employees shall receive instructions on the basic protection concepts, including the following:

(i) Undesirable events,

(ii) Protective shut-in action, and

(iii) Emergency support system (ESS).

(5) Employees shall receive instructions on the causes of failure in such systems, detection of abnormal conditions, primary protection devices and procedures, secondary protection devices and procedures, and location of safety devices for the control or mitigation of various undesirable events, including the following:

(i) Overpressure,

(ii) Leak,

(iii) Liquid overflow,

(iv) Gas blowby,

(v) Underpressure,

(vi) Excess temperature (fire- and exhaust-heated components),

(vii) Direct ignition source (fired components), and

(viii) Excess combustible vapors in the firing chamber (fired components).

(6) Each employee shall receive instructions on safety analysis concepts, including the following:

(i) Safety analysis table (SAT),

(ii) Safety analysis checklist (SAC), and

(iii) Safety analysis function evaluation (SAFE) chart.

(7) The employee shall receive instructions on the safety analysis of each basic process component used in a platform production process system, including the following:

(i) Wellheads and flow lines,

(ii) Injection lines,

(iii) Headers,

(iv) Pressure vessels,

(v) Atmospheric vessels,

(vi) Fire- and exhaust-heated components,

(vii) Pumps,

(viii) Compressors,

(ix) Pipelines, and

(x) Heat exchangers (shell tube).

(8) Employees shall receive hands-on training on safety devices to prepare him/her for installing, operating, repairing, or maintaining such equipment. In this context, operating includes testing, adjusting calibrations, and recording test and calibration results. Installing includes the original installation and replacement of equipment. Maintaining refers to preventive maintenance, routine repair, and replacement of defective or malfunctioning component parts. The major categories of equipment that shall be included in the training program, as a minimum, are the following:

(i) High-low-pressure sensors,

(ii) High-low-level sensors,

(iii) High-low-temperature sensors,

(iv) Combustible gas detectors,

(v) Pressure relief devices,

(vi) Flow-line check valves,

(vii) Surface safety valves,

(viii) Shutdown valves,

(ix) Fire (flame, heat, or smoke) detectors,

(x) Auxiliary devices (3-way block and bleed valves, time relays, 3-way snap acting valves, etc.),

(xi) Surface-controlled subsurface safety valves and/or surface-control equipment, and

(xii) Subsurface-controlled subsurface safety valves.

(9) Each employee shall be instructed in the following areas concerning surface and subsurface equipment.

(i) Each employee shall receive instructions relating to inspections, testing, and maintenance of surface safety devices.

(ii) Each employee shall receive instructions relating to inspection, testing, and maintenance of subsurface safety devices.

(iii) Each employee shall receive instructions relating to the inspection, testing, and maintenance of surface-control systems for surface-controlled subsurface safety valves.

(10) Each employee shall receive instructions in at least one safety device that illustrates the primary operation principle in each class of safety devices

stated in § 250.214(a)(8) (i) through (xii) of this part, including the following:

(i) Basic principle of operation,

(ii) Limitations affecting application,

(iii) Most probable problems causing equipment malfunction or failure and the correction of these problems (e.g, replace bad O-rings, clear blocked orifice, replace broken spring),

(iv) Test for proper actuation point, operation, etc.,

(v) Adjustment, calibration, or reset where applicable,

(vi) Recording inspection results and malfunctions on appropriate format, and

(vii) Special techniques for installation of safety devices, including safety device orientation, special lubricants, and special installation tools.

(11) Each employee shall receive instructions on the basic principle and logic of the emergency support system, including the following:

(i) Combustible and toxic gas detection system,

(ii) Liquid containment system,

(iii) Fire loop system,

(iv) Other fire detection devices,

(v) Emergency shutdown system, and

(vi) Subsurface safety valves (SSSV).

(12) Each employee shall receive general instructions in the following well-completion and well-workover topics:

(i) Reasons for well completion or well workover,

(ii) Killing a producing well,

(iii) Preparing the well entry:

(A) Use of back-pressure valves,

(B) Removal of tree, tubing, tubing hanger, and SSSV, and

(C) Installation and testing of BOP prior to initiating well-completion or well-workover operations.

(b) *Refresher production safety system personnel training course.* An employee who is engaged in the installation, repair, testing, maintenance, or operation of a surface or subsurface safety device and the individual on the platform with overall responsibility for production operations shall successfully complete a refresher course in production safety systems approved under the provision of § 250.211 of this part within 60 days before or after the second anniversary of the date of the individual's most recent completion date for a basic course approved under § 250.211 for production safety systems. (Employees who successfully complete production safety system training prior to February 25, 1991, need not take a refresher course prior to completion of a basic or advanced course which must be taken within 60 days before or after the fourth anniversary of their successful completion of production safety system training.) The refresher course shall contain, as a minimum, instructions in the most recent improvements in equipment for production safety systems and any applicable Government regulations that pertain to production safety systems. The candidate shall pass a written test.

(c) *Qualification procedures for production safety system personnel.* An employee who is engaged in the installation, repair, testing, maintenance, or operation of surface or subsea safety devices and the individual on the platform with overall responsibility for production operations shall not engage in such operations in the OCS until he/she meets the following qualifications:

(1) The employee shall have successfully completed the training requirements in § 250.214(a) of this part and pass a written test to verify that the candidate has a thorough understanding of production safety systems and is qualified to install, test, maintain, and operate surface and/or subsurface safety devices. Evidence that the training has been completed shall be maintained at the job site.

(2) The employee shall maintain the qualification by the following:

(i) Successful completion of an approved basic or advanced production safety systems training course within 60 days before or after the fourth anniversary of the date of the last successful completion of a basic or advanced course in production safety systems, and

(ii) Successful completion of a refresher course in production safety systems within 60 days before or after the second anniversary of the date of the individual's last successful completion of a basic or advanced course in production safety systems.

(3) A manufacturer's representative need to be qualified in accordance with the requirements of § 250.214 of this part if the representative is working on equipment supplied by the company, provided the representative has received training and is qualified by the manufacturer to install, service, or repair the specific safety device or safety system, and if the representative is accompanied by an individual who is trained under § 250.214 and is capable of evaluating the impact of the work done by the manufacturer's representative on the total system.

(4) On-the-job trainees working with safety devices but are not trained in accordance with the regulation of this section shall be supervised by an individual who is qualified under this section and is present at the worksite.

(d) *Submission of training program for production safety system courses.* Training programs and implementation plans for training for production safety system personnel shall be submitted to the Chief, Offshore Inspection and Enforcement Division. Training programs and implementation plans submitted for approval and certification for production safety system courses shall comply with § 250.211 of this part.

§ 250.215 MMS-conducted testing.

(a) *Testing at worksite.* (1) When requested by MMS, lessees and contractors shall allow MMS to test workers at the worksite to evaluate the effectiveness of approved training programs in providing trained workers in the OCS. Employees being tested shall be identified by the following information:

(i) Job classification to which currently assigned,

(ii) Name of operator,

(iii) Name of course, name of organization, location, and date of most recent basic (or advanced) and refresher courses taken for the job category for which currently assigned.

(2) Following testing at the worksite, lessees shall take actions necessary to ensure that identified deficiencies are corrected. In the event test results indicate that deficiencies exist, lessees shall conduct any necessary additional testing to isolate problem areas or problem personnel and shall provide additional training or reassign employees to ensure that all personnel are able to perform their assigned duties. Tests at the worksite will not identify the names of the individuals tested. The MMS actions resulting from worksite testing will attempt to identify and correct problems at particular facilities, problems with particular training organizations, or problems with the MMS training program.

(b) *Testing at training facility.* When requested by MMS, the training organization shall allow MMS personnel to conduct tests of trainees. A trainee who does not pass the MMS-conducted test is considered to have not satisfactorily completed the course unless the trainee passes a retest within 48 hours in accordance with these regulations.

[FR Doc. 91-1552 Filed 1-23-91; 8:45 am]
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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 705, 715, 752, and 753

[AIDAR Notice 91-1]

Miscellaneous Editorial Changes

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to reflect the latest OMB approval expiration date for the various AIDAR information collections, to provide the current address for pouch mail, and to provide current Zip Codes, and to correct a reference to "calendar days" to read "workdays".

EFFECTIVE DATE: February 25, 1991.

FOR ADDITIONAL INFORMATION CONTACT: Mr. James M. Kelly, MS/PPE, room 1600I, SA-14, Agency for International Development, Washington, DC 20523-1435. Telephone: (703) 875-1534.

SUPPLEMENTARY INFORMATION: The changes being made by this Notice are editorial and are not considered significant rules under FAR section 1.301 or subpart 1.5, nor major rules as defined in Executive Order 12291. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the **"FOR FURTHER INFORMATION CONTACT"** section of the preamble.

List of Subjects in 48 CFR Parts 701, 705, 715, 752, and 753

Government procurement.

For the reasons set out in the Preamble, chapter 7 of title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations for parts 701, 705, 715, 752, and 753 continue to read as follows:

Authority: Sec. 621, Public Law 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

701.105 [Amended]

2. Paragraph (a) of section 701.105, OMB approval under the Paperwork Reduction Act, is amended by removing "(expiration date 12/31/90)" and adding "(expiration date 10/31/91)".

PART 705—PUBLICIZING CONTRACT ACTIONS

705.002 [Amended]

3. Section 705.002, Policy, is amended by removing "20523" and adding "20523-1414".

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.5—Unsolicited Proposals

4. Paragraph (a) of section 715.504 is revised to read as follows:

715.504 Advance guidance.

(a) Information concerning AID's policies for unsolicited proposals (other than research) is available from the Agency for International Development, OSDBU/MRC, room 1400A, SA-14, Washington, DC 20523-1414. For unsolicited research proposals the address is the Agency for International Development, S&T/RUR, room 309, SA-18, Washington, DC 20523-1807.

* * * * *

5. Section 715.506 is revised to read as follows:

715.506 Agency procedures and point of contact.

Initial inquiries and subsequent unsolicited proposals should be submitted to the address specified in section 715.504 of this subpart.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Texts of Provisions and Clauses

752.219-8 [Amended]

6. Section 752.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, is amended by removing "20523" and adding "20523-1414".

Subpart 752.70—Texts of AID Contract Clauses

752.7002 [Amended]

7. Paragraph (p)(1)(i) of the contract clause in section 752.7002, Travel and Transportation, is amended by removing "20523" and adding "20523-1419".

752.7006 [Amended]

8. The contract clause in section 752.7006, Notices, is amended by removing "20523" and adding "20523-0061".

9. Paragraph (a)(4) of the contract clause in section 752.7015 is revised to read as follows:

752.7015 Use of Pouch Facilities.

* * * * *

(a) * * *

(4) Official mail as authorized by paragraph (c)(1) of this clause should be addressed as follows:

Name, followed by the symbol "C"
USAID/City or Name of Post/Four Digit Country Code, Washington, DC 20090-6950.

* * * * *

752.7018 [Amended]

10. Paragraph (b) of the contract clause in section 752.7018, Health and Accident Coverage for AID Participant Trainees, is amended by removing "20523" and adding "20523-1601".

752.7019 [Amended]

11. Paragraph (c) of the contract clause in section 752.7019, Participant Training, is amended by removing "20523" and adding "20523-1601".

752.7026 [Amended]

12. Paragraph (b)(3) of the contract clause in section 752.7026, Reports, is amended by removing "20523" and adding "20523-1802".

752.7031 [Amended]

13. Paragraph (c)(2) of the contract clause in section 752.7031, Leave and Holidays, is amended by removing the words "calendar days" and adding "workdays".

PART 753—FORMS

Subpart 753.1—General

753.107 [Amended]

14. Section 753.107, Obtaining forms is amended by removing "20523" and adding "20523-0001".

Dated: December 3, 1990.

John F. Owens,

Procurement Executive.

[FR Doc. 91-1576 Filed 1-23-91; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 900833-0327]

RIN 0648-AD51

Foreign Fishing; Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 16 to the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands (BSAI) Groundfish and Amendment 21 to the FMP for the Gulf of Alaska (GOA) Groundfish Fishery. These regulations address the following management problems in both the BSAI and GOA: (1) Prohibited species bycatch management, (2) procedures for specifying total allowable catch (TAC), and (3) gear restrictions. Regulations specific to GOA address management of demersal shelf rockfish. Definitions of overfishing to amend both FMPs, while not codified, are referenced. In addition, the reapportionment procedures for BSAI groundfish are clarified. These actions are necessary to promote management and conservation of groundfish and other fish resources. They are intended to further the goals and objectives contained in both fishery management plans that govern these fisheries.

EFFECTIVE DATE: January 18, 1991.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907-271-2809). Copies of a federalism assessment may be obtain from NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson or Ronald J. Berg (Fishery Management Biologists, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GAO and BSAI are managed by the Secretary of Commerce (Secretary) according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fishery are implemented at 50 CFR part 620.

The Council approved for review by the Secretary under section 304(b) of the Magnuson Act the parts of Amendments 16 and 21 that are listed in the above summary, and an additional provision on vessel incentive that is described below. The Secretary received these amendments on August 8, 1990, for review. The Magnuson Act requires the Secretary, or his designee, to approve, disapprove, or partially disapprove FMPs or FMP amendments before the close of the 95th day following receipt. Following receipt of Amendments 16 and 21, the Director of NMFS, Alaska Region (Regional Director), immediately commenced a review of the amendments to determine whether they were consistent with the provisions of the Magnuson Act and other applicable law. A notice of availability of the amendments was published in the **Federal Register** (55 FR 33340, August 15, 1990). It invited review of, and comment on, the amendments until October 9, 1990. A proposed rule was filed with the Office of the Federal Register on September 12, 1990, and published on September 18, 1990 (55 FR 38347), and a correction to the proposed rule was published on October 25, 1990 (55 FR 43063). The proposed rule invited comments through October 27, 1990. This final rule implementing Amendments 16 and 21 takes comments received into account. Comments received are summarized and responded to below (see Public Comments Received).

The preamble to the proposed rule described and presented the reasons for each measure contained in the amendments. The Regional Director has reviewed each measure and the reasons for it. During his review, the Regional Director considered comments received from the public, fishing associations, and interested agencies. Except for a vessel incentive program to avoid excessive bycatch rates of prohibited species, he has determined that each measure is consistent with the Magnuson Act and other applicable law. He has approved the consistent measures contained in Amendments 16 and 21 as authorized under section 304 of the Magnuson Act. For reasons given below, he disapproved the vessel incentive program.

The following is a summary from the proposed rule of what each approved measure requires or accomplishes:

(1) Prohibited species catch (PSC) limits and bycatch limitation zones for Pacific halibut, Tanner crab *Chinoecetes bairdi*, and red kng crab in the BSAI, which are applicable only to trawl fisheries, are established;

(2) Apportionments of PCS limits in the BSAI into bycatch allowances to DAP and JVP trawl fisheries, subject to review and revision by the Secretary and after consultation with the Council, is authorized. For the 1991 fishing year, fishery categories are: domestic annual processing (DAP) trawl fisheries for turbot, rock sole, flatfish, and all others combined; and joint venture processing (JVP) trawl flatfish fishery;

(3) In the GOA, separate apportionments of halibut PSC to hook-and-line and pot gear are authorized;

(4) Seasonal allocations of Pacific halibut in the GOA and BSAI, and Tanner and red king crab in the BSAI are authorized;

(5) Procedures for interim TAC specifications in both the BSAI and GOA are established;

(6) Fishing gear restrictions in both the BASI and GOA are implemented, including a new definition of pelagic trawl and requirements for biodegradable panels and halibut exclusion devices on groundfish pots;

(7) Management by the State of Alaska of the demersal shelf rockfish fishery with Council oversight in the Eastern Regulatory Area is authorized; and

(8) Overfishing of groundfish stocks in both the BSAI and GOA is defined.

In addition to measures implementing Amendments 16 and 21, the following regulatory changes were also proposed and are hereby approved, to be effective January 1, 1991: (1) New definitions for fishing line, foot rope, jig, and pot-and-longline gear; (2) new coordinates for Cape Peirce; and (3) a clarification to account for reapportionments of JVP to DAP.

Changes From the Proposed Rule in the Final Rule

1. In §§ 672.2 and 675.2, the definition of a "pelagic trawl" is changed to more accurately represent how a typical pelagic trawl is configured. The definition for a pelagic trawl in this final rule requires a minimum mesh size of 64 inches as measured for 10 meshes aft of

the fishing line, head rope, and breast lines. The final rule for a pelagic rope trawl requires that parallel lines be spaced no closer than 64 inches apart, or a combination of parallel lines and meshes with stretched mesh sizes of at least 64 inches, measured as described for the pelagic mesh trawl, for a distance of at least 33 feet. Definitions for "breast line" and "head rope" are also added to §§ 672.2 and 675.2 in this final rule to further clarify the definition of "pelagic trawl."

2. In § 672.20, paragraphs (f)(1)(i) through (v) are added to: (1) Reflect the intent of the Council in Amendment 21 that attainment of seasonal allocations of halibut by gear type and by JVP or DAP will result in seasonal closures for the appropriate gear type and vessel type (JVP or DAP); (2) transferring any unused seasonal halibut PSC that had been allocated to JVP trawl, DAP trawl, JVP hook-and-line, or DAP hook-and-line to its respective PSC allowance in the subsequent season during a current fishing year; and (3) deducting any overage of seasonal halibut PSC from JVP trawl, DAP trawl, JVP hook-and-line, or DAP hook-and-line from its respective PSC allowance in the subsequent season during a current fishing year.

3. In § 672.20, paragraphs (f)(2) (i) and (ii), mention of "target fisheries" has been deleted in the final rule because the use of such a term in this context was only appropriate if the vessel incentive program covered in § 672.26 of the proposed rule had been retained in the final rule.

4. In § 672.20, paragraph (f)(2)(i), the proposed rule language is modified to reflect the Council's intent to permit the Secretary discretion on whether to specify a halibut PSC limit for pot gear.

5. In § 675.7, paragraph (d) will not be revised in the final rule because the only change in the proposed rule referred to § 675.26, which is not retained in the final rule.

6. In § 675.20, paragraph (b)(1)(ii) is clarified to account for reapportionments of JVP to DAP. Because DAP priority over JVP under the Magnuson Act, such preference should be clarified in regulations. Present regulations do not provide for proper accounting of groundfish reapportionments from JVP to DAP, which forces the appearance that DAP specifications are exceeded and JVP specifications are underharvested.

7. The following sections in the proposed rule are deleted in the final rule: §§ 672.20 (c)(1), (c)(1)(i) and (c)(1)(ii) and 675.20 (a)(7)(i) and (a)(7)(ii). Amendments 14 and 19 (proposed rule published at 55 FR 37907, Sept. 14, 1990) also amend these same sections; however, changes proposed by Amendments 14 and 19 differ slightly from those proposed for Amendments 16 and 21. In order to make both changes to the sections effective but not in conflict with each other, the amendatory and regulatory language contained in Amendments 16 and 21 will be included only in the final rule for Amendments 14 and 19 to the FMP's, to be effective January 1, 1991, and published at 56 FR 492 (January 7, 1991).

8. In § 675.21, new paragraphs (c)(3) and (c)(4) are added to authorize: (1) Transferring any unused seasonal PSC bycatch allowance that had been apprortioned to any of the fisheries in § 675.21(b)(4) to its respective season PSC bycatch allowance in the subsequent season, and (2) deducting and overage of seasonal PSC bycatch allowance from its respective PSC in the subsequent season.

9. In § 675.21, paragraph (b)(1) of the proposed rule incorrectly referred to paragraph (b)(3) of the same section. The same paragraph of § 675.21 of the final rule correctly refers to paragraph (b)(4) of the same section.

10. In § 675.21, paragraphs (b)(2)(i) and (b)(4)(iii) are rearranged and paragraphs (b)(4)(i) through (v) are reworded to more accurately reflect the intended heirarchy of the domestic fisheries that will be assigned PSC limit apportionments. This heirarchy was explained in the preamble to the proposed rule on page 38349, but the regulatory text in the proposed rule erroneously defined the fisheries as they appeared in the regulations implementing Amendment 12a to the FMP for BSAI groundfish.

11. In § 675.21, throughout paragraph (c), reference is made in the final rule to seasonal apportionments of PSC allowances to reflect the intent of Amendment 16.

12. Sections 672.26 and 675.26 are rescinded and reserved. These sections contained the proposed vessel incentive program intended to reduce halibut bycatch rates in the groundfish trawl fisheries. The Council intended that the proposed program identify and penalize vessels that fail to meet acceptable halibut bycatch standards that would be established for 17 separate fisheries in the BSAI and GOA. The proposed rule would have required vessels in each fishery to maintain a four-week average bycatch rate less than two times the concurrent fleet average in each of the fisheries. Failure of a vessel to meet such bycatch standards would have resulted in a suspension of the vessel from the Alaskan groundfish fishery for a period ranging from five days to to six weeks. The Regional Director disapproved this program because it did not conform to national standard 7 and the requirements of the Administrative Procedure Act (APA).

National standard 7 requires that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. A factor for consideration in determining whether a proposed measure is necessary is the costs associated with the proposed measure, balanced against its benefits. Costs include added research, administrative, and enforcement costs, as well as costs to the industry of compliance. Benefits include specific gains produced by the proposed measure.

Under the proposed vessel incentive program, costs for additional research, administration, and enforcement would be incurred without a real benefit to the industry and the resource. Subsequent to the Council approval of the proposed incentive program, NMFS analyses of the 1990 observer database indicated that numerous revisions to the observer database occur after observers are debriefed and their data are verified, which could take up to six months. Without verified, statistically reliable observer data, the proposed incentive program would not be enforceable. If violations could not be enforced, the intended benefit of the proposed program, which was to reduce bycatch and protect, conserve and manage the resource, would not be realized. The proposed incentive program, therefore, would not meet the requirements of national standard 7.

Moreover, the intent of the Council for inseason action against vessels that fail to meet acceptable bycatch standards could not be met, since enforcement actions would occur postseason. The time period required to develop a verified observer database to enforce the proposed program would preclude vessel suspension as an effective inseason enforcement action, undermine the general effectiveness of vessel suspension for enforcement purposes, and unreasonably increase administrative costs associated with enforcement procedures without accomplishing the intended enforcement purposes.

Preclusion of vessel suspension as an effective inseason action could result from several situations in which vessel suspensions do not occur at an appropriate time. For example, vessel operators and/or owners could be issued a suspension notice after a vessel operator has left the vessel; fishing areas could be closed prior to vessel

suspensions due to the attainment of a groundfish quota or prohibited species bycatch allowance; or the vessel could undergo a suspension period as part of its routine maintenance schedule. Therefore, administrative costs would be incurred without accomplishing the intended purpose of the program. For these reasons, the proposed vessel incentive program would not effectively achieve its purpose and, therefore, would be unlawful as specified in section 706 of title 5, U.S.C. (APA).

In sum, a vessel incentive program must conform to the national standards set forth in the Magnuson Act and the requirements of the APA. Because the Regional Director determined that the proposed vessel incentive program did not conform to those standards and requirements, he partially disapproved Amendments 16 and 21. However, the Regional Director expects that the Council will revise and resubmit another vessel incentive program that could be implemented within NMFS administrative and legal constraints. If approved, the Secretary would implement the program as soon as possible within his authority under the Magnuson Act.

13. In this final rule, Table 2 (1989 Prohibited Species Catch Allowances) is removed from 50 CFR part 675 because it is no longer applicable to management of the fishery.

14. The following sections are changed from the proposed rule (55 FR 38347; September 18, 1990) to implement regulatory text from Amendment 12a (54 FR 32642; August 7, 1989) that expired on December 31, 1990, so that they may be extended indefinitely: (1) The definition of statistical area, introductory text and statistical areas 516 and 517 in § 675.2; (2) §§ 675.7 (c) and (d); (3) §§ 675.20 (e)(1)(iii) and (e)(2)(ii); and (4) § 675.22. These sections were referred to in the proposed rule but not printed in the regulatory text.

15. The following section is changed from the proposed rule to the final rule to implement regulatory text originally published at 55 FR 33721 (August 17, 1990) and at 55 FR 47883 (November 16, 1990) that expired on December 31, 1990, so that it may be extended indefinitely: §§ 675.24 (b), (c), and (d). This section was referred to in the proposed rule but not printed in the regulatory text.

Public Comments Received

Three letters of comment were received from fishing associations and individual fishermen during the comment period. Comments also were received from the North Pacific Fishery Management Council during its September 24–29, 1990, meeting. Comments focused on: (1) Establishment of fishery categories that are eligible to receive separate prohibited species bycatch allowances (bycatch allowances); (2) seasonal allocations of bycatch allowances to assigned target fishery categories; (3) the vessel incentive program; (4) imposition of fixed PSC limits in Amendment 16 for BSAI groundfish fisheries; (5) definitions of overfishing pertaining to both the GOA and BSAI fisheries; (6) significance of Amendment 16 with respect to Executive Order 12291; and (7) the definition of a pelagic trawl.

Comments on each of these subjects are summarized and responded to as follows:

Establishment of Fishery Categories That Are Eligible To Receive Separate Bycatch Allowances

Comment 1. Regulatory authority for establishing fishery categories that are eligible to receive PSC apportionments is preferable to the present system, which would require an FMP amendment to accomplish the same action.

Response: Comment noted. Target fishery categories will now be established by regulatory amendment.

Seasonal Apportionments of PSC Bycatch Allowances

Comment 2. Regulatory authority to allocate fishery bycatch allowances by seasons is supportable, but apportionments must take into account seasonal demands of the fisheries.

Response: Comment noted. The Council must consider seasonal demands of the fisheries when making final recommendations to the Secretary.

Comment 3. The procedure for making final decisions about seasonal apportionments of PSC bycatch allowances in late December imposes extreme difficulties for fishermen who must make planning decisions for fisheries that start January 1.

Response: Given the current specification process for groundfish quotas, a parallel process for determining seasonal apportionments of bycatch allowances is necessary. If the groundfish procedure were to be changed, a parallel change in the procedure for seasonal apportionment of bycatch allowances would also be required.

Comment 4. Fishing interests may try to influence Council recommendations for seasonal apportionments of fishery bycatch allowances to suit their own economic or political interests.

Response: The Council must consider effects of seasonal allocations, including maximizing benefits to the Nation, in making recommendations to the Secretary. The mere fact that particular economic or political interests benefit from a solution that maximizes benefits to the Nation is not necessarily contrary to the Magnuson Act or other applicable law.

The Vessel Incentive Program

Comment 5. Recognizing that the fishing fleet was incapable of collectively modifying its fishing practices to avoid bycatches of prohibited species in the BSAI while participating in open access fisheries, the Council recommended a vessel incentive program to encourage individual vessels to reduce bycatch rates of prohibited species, but now NMFS has apparently concluded that such a program is not approvable.

Response: While NMFS has concluded that the proposed program cannot be implemented under administrative and legal constraints (see section "Changes In the Final Rule From the Proposed Rule"), NMFS is committed to developing a vessel incentive program that would effectively reduce bycatch rates of prohibited species. Such a program, however, must conform to requirements of the Magnuson Act and other laws, and also must be within the operational and administrative capabilities of NMFS to implement and enforce.

Comment 6. NMFS' concerns about enforceability of the proposed vessel incentive program do not warrant delaying implementation of the program.

Response: NMFS' concerns about enforceability do indeed warrant delaying program implementation until the concerns can be resolved. To implement a program without means to enforce it would violate the Magnuson Act and the APA.

Imposition of Fixed Prohibited Species Catch (PSC) Caps in Amendment 16 for BSAI Groundfish Fisheries

Comment 7. When the Council adopted Amendment 16 during its June 1990 meeting, it consciously failed to consider alternatives to the PSC caps, other than no caps, that were implemented as part of Amendment 12a to the BSAI FMP, which violates the National Environmental Policy Act (NEPA), because the Council failed to consider: changes in prohibited species abundance; changes in the target species abundance and concomitant changes of the groundfish fisheries; and consequences of premature closures caused by the Amendment 12a caps during the 1990 fishery. The amendment 12a caps have proven unduly

restrictive—especially absent an incentive program.

Response: Upon receiving advice from NOAA General Counsel that the Council must review the PSC caps in Amendment 16, the Council requested the BSAI plan team to prepare an analysis of existing PSC caps as well as caps equal to 50 percent and 150 percent of the Amendment 16 caps for Council consideration at its September 1990 meeting. This analysis was completed and made available to the Council. Upon reviewing the analysis, the Council affirmed its June recommendation to implement the caps included in Amendment 16. This process is not inconsistent with NEPA.

In light of groundfish harvests through November 9, 1990, the Amendment 12a caps have not proven unduly restrictive. Although trawling for pollock and Pacific cod was prohibited with trawls other than pelagic trawls (55 FR 33715, August 17, 1990) upon reaching the halibut PSC limit apportioned to the "other fishery," harvests with other gear have continued. The total allowable catch (TAC) of 1,310,751 million metric tons (mt) for pollock in the Bering Sea subarea was reached on October 13. The entire TAC of 100,000 mt for pollock in the Aleutian Islands subarea is expected to be reached by mid-November. Some fishermen are continuing to harvest Pacific cod with pelagic trawls, as well as with hook-and-line and pot gear. More than 159,000 mt of Pacific cod, about 80 percent of the TAC, have been harvested by DAP and JVP operations. Although approximately 40,000 mt of the Pacific cod TAC remain unharvested through mid-November, a portion of this will be harvested prior to the end of 1990. Because pot, hook-and-line, and pelagic trawl gear are still permissible in the BSAI cod fishery, a shortfall in the Pacific cod harvest would likely be a result of market constraints and not because the PSC caps were unduly restrictive.

The DAP flatfish fishery is still ongoing, mostly through cooperation of an industry group committed to fishing at low halibut bycatch rates. Fishing effort on remaining amounts of the flatfish species is believed to be more constrained by market incentives than by the existing PSC caps. The JVP fishery for the flatfish species was closed early in 1990 after reaching its red king crab and halibut bycatch allowances. In a separate rulemaking (56 FR 384, January 4, 1991), the Secretary has implemented a delay of the 1991 flatfish season for yellowfin sole, turbot, and "other flatfish" for JVP and DAP until May 1 to increase the total amount of groundfish harvested before red king crab and halibut bycatch allowances are reached. Lower bycatch rates for prohibited species in the 1991 flatfish fishery are expected to result, promoting fuller flatfish harvests. Should this purpose be realized, the Amendment 16 caps would not unduly restrict the flatfish fishery.

Although the Council could not have projected the magnitude of the 1990 groundfish harvests when it recommended the Amendment 16 caps, the BSAI groundfish fisheries, which have harvested more than 80 percent of the 1990 optimum yield, have now proven that the PSC caps have not been unduly restrictive, contrary to the commenter's assertion.

Comment 8. Amendment 16 PSC caps are fixed by the FMP, which is contrary to the Magnuson Act and other applicable laws, including NEPA and Executive Order 12291, because they are inconsistent with national standards 1, 2, and 6; because NEPA requires a periodic review of fixed caps to ensure consideration of reasonable alternatives; and because Executive Order 12991 requires a periodic review to ensure provision for cost/benefit analyses to maximize net benefits to society.

Response: Fixed PSC caps in Amendment 16 are consistent with national standards 1, 2, and 6. National standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. Given the large magnitude of the BSAI groundfish harvests through November 9 (see response to Comment 7), the Secretary finds that the fixed caps would not by themselves have jeopardized achievement of the optimum yield. Shortfalls in additional harvests may well be the result of market constraints. National standard 3 requires that conservation and management measures shall be based upon the best scientific information available. The Council reviewed the best available scientific information in affirming the PSC caps at its September meeting. National Standard 6 requires that conservation and management measures take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The Council must consider new information as it becomes available in the future and could recommend amendments to the BSAI FMP, including emergency rules, to account for new information. The Secretary is able to respond within the authority provided by section 305(e) of the Magnuson Act to new information.

Comment 9. Amendment 16 PSC caps were adopted by the Council in conjunction with a vessel incentive program. Without such a program, the caps cannot be justified.

Response: Amendment 16 PSC caps can be justified without a vessel incentive program. The caps were intended to reduce the bycatch of prohibited species in the trawl fisheries. The caps have been successful to this end. Any overages in caps as a result of fast-paced fisheries could be the result of inadequate reporting procedures, which are being upgraded for the 1991 fishing year to improve monitoring of the status of groundfish harvests as well as caps. The fact that some fisheries were closed to bottom trawling in 1990 when PSC caps were reached does not mean that Amendment 16 PSC caps are unjustifiable without a vessel incentive program. As stated in the response to Comment 7, groundfish harvests have been substantial, reaching more than 80 percent of the overall 2.0 million mt optimum yield established for 1990. Although some caps were reached, causing premature closure of fisheries to bottom trawls, the use of pelagic trawls continued. The DAP flatfish fishery has yet to reach its bycatch allowances for halibut and *C. bairdi* and is ongoing under a voluntary vessel incentive program without Federal support. NMFS worked with the Council to develop a 1991 vessel incentive program within NMFS' administrative and legal constraints. The Council has submitted a revised program for Secretarial review and the program could be implemented early in 1991 if Secretarial approval is received.

Comment 10. Implementing Amendment 12a caps as part of Amendment 16 is unnecessarily restrictive because the cost of compliance by the trawl industry is excessive relative to benefits to the crab and halibut fisheries, which violates national standard 4 and Executive Order 12291.

Response: Amendment 16 caps do not violate either national standard 4 or Executive Order 12291. National standard 4 requires that conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be: (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual,

corporation, or other entity acquires an excess share of such privileges. The Secretary has determined that resulting allocations of PSC species to bottom trawl fishermen as well as to crab and halibut fishermen as a result of implementing the Amendment 16 caps are consistent with each test of this national standard.

The Secretary finds that implementing the Amendment 16 caps is not a major rule within the meaning of Executive Order 12291. The magnitude of the 1990 groundfish harvest will exceed 80 percent of the 1990 optimum yield even with the Amendment 12a caps in place. While more of the JVP apportionment of flatfish species might have been harvested, shortfalls in DAP harvests are believed to be mostly the results of market constraints and not the imposition of the PSC closures during 1990. Pacific cod is the only major target species no longer accessible to bottom trawl gear through November 9, 1990, but Pacific cod harvests by other gear types is ongoing.

Comment 11. A vessel incentive program to replace that disapproved in Amendment 16 will not constrain bycatch rates of crab, nor will it be in effect on January 1.

Response: The Council has submitted a revised vessel incentive program for Secretarial review under section 304(b)(3) of the Magnuson Act. The revision does address crab bycatches. If approved, the Secretary will implement the revision as soon as possible under authority provided by the Magnuson Act. An emergency interim rule for the revised vessel incentive program, as approved by the Council at its December meeting, is under review by the Secretary for possible implementation early in 1991.

Comment 12. PSC caps imposed by Amendment 16 on trawl fisheries should be rejected, because they represent a *de facto* allocation of groundfish fishing privileges to fixed gear fisheries, to which PSC caps are not applicable, violating national standard 4.

Response: Imposing Amendment 16 caps only on trawl fisheries, but not on fixed gear fisheries, including hook-and-line and pot gear, does not violate national standard 4. Pacific cod is the only major groundfish species caught in target fisheries using both trawl and fixed gear that is affected by Amendment 16 caps. The Secretary recognizes that fixed gear and, to some extent, pelagic trawl gear would be used increasingly to harvest Pacific cod should bottom trawling be closed as a result of reaching a PSC cap. This result, however, is not inconsistent with findings that must be made under national standard 4 (see description of this national standard under the response to Comment 10).

Comment 13. Fixed Amendment 16 PSC caps for crab are not justified for 1991 nor has an analysis been done to demonstrate their appropriateness beyond 1991; they should be frameworked to allow annual review based on the same criteria as used for the GOA FMP with respect to establishing the GOA halibut PSC.

Response: The Secretary finds that the fixed crab caps contained in Amendment 16 are justified under the national standards and other applicable law for implementation in 1991. Given that the Magnuson Act requires that conservation and management measures be based on the best scientific information available (see national standard 2), any analysis to demonstrate appropriateness beyond 1991 would likely be arbitrary because new information could be forthcoming that would render moot any such analysis at this time. The Council could consider frameworking the caps, especially when information is likely to be forthcoming annually, which could then be considered under framework procedures. Analyses of any changes would be required by the Council to enable it to make appropriate decisions.

Comment 14. The Regional Director should have inseason authority to respond to incorrect assumptions made in initially apportioning PSC limits into fishery bycatch allowances (e.g., incorrect information pertaining to economic effects on the industry, other than calculation errors or biological changes) in order to promote achieving optimum yield.

Response: The Secretary concurs that inseason authority to respond to incorrect assumptions pertaining to economic effects on the industry would be desirable. This type of change, about which the Council may want to make recommendations, would require an amendment to current regulations. What may be entirely reasonable to one segment of the industry, however, could be an anathema to another segment. Because changes in PSC bycatch allowances are inherently controversial, criteria would have to be developed that would set limits about the extent of inseason changes. The industry ought to be able to predict reasonably the potential outcome of any inseason changes. A notice and comment period on the inseason changes with accompanying analyses would be required unless sufficient reasons existed to waive an opportunity for notice and comment. While this suggested improvement might be desirable, its absence does not detract from approvability of the measure as it stands in Amendments 16 and 21.

Definitions of Overfishing Pertaining to Both the GOA and BSAI Fisheries

Comment 15. The Scientific and Statistical Committee recommended that the definition of overfishing, which is based on a constant fishing mortality rate with no threshold, is superior to the Council's recommendation, which is based on a maximum fishing mortality at a level corresponding to maximum sustainable yield for all biomass levels in excess of that value.

Response: The Secretary finds that the Council's definition of overfishing meets the requirements of the Magnuson Act.

Significance of Amendment 16 with Respect to Executive Order 12291

Comment 16. Amendment 16 is a major rule for purposes of Executive Order 12291 and a Regulatory Impact Analysis is required because: (1) Without a vessel incentive program, imposed costs will exceed $100 million; (2) PSC closures disrupted markets dependent on trawl production; (3) shortages of product caused higher costs for companies and consumers; and (4) PSC closures resulted in signigicant reductions and redistribution in groundfish catches.

Response: Amendment 16 is not a major rule within the meaning of Executive Order 12291. Costs will not exceed $100 million. Bottom trawl production was curtailed, but total trawl production achieved the entire TAC for pollock in the BSAI. Through November 9, the total groundfish harvest has exceeded 80 percent of the 1990 optimum yield (see response to Comment 7), and has exceeded 1989 DAP harvests. Pacific cod harvests are ongoing and shortfalls in Pacific cod harvests are believed to have been mostly the result of market constraints, not the PSC closures.

Definition of Pelagic Trawl

Comment 17. Language used to define a pelagic trawl in the emergency rule was ambiguous. The Regional Director should implement a test fishery to determine whether the definition of pelagic trawl in the interpretive rule is needed to reduce bycatch. If bycatch under the emergency rule definition of pelagic trawl does not differ significantly from bycatch under the interpretive rule, then a pelagic trawl that conforms to the emergency rule definition should be allowed.

Response: The Secretary recognizes that experimental or test fisheries would

be useful in determining the effectiveness of the emergency rule definition versus the interpretive rule definition of a pelagic trawl, as well as other gear designs, in reducing bycatch. The Council has directed its groundfish plan teams to prepare amendments to both groundfish FMPs that would authorize experimental fisheries. Determining the effectiveness of the pelagic trawl definition in the emergency interim rule compared to the interpretive rule could be accomplished under such authority. In the meantime, fishery information also might be obtained during the remaining weeks that the clarified pelagic trawl definition is in effect, depending on fisheries that will be conducted during that time.

North Pacific Fishery Management Council Comments on Amendments 16 and 21

Comment 18. In response to a NMFS letter that a "penalty box" vessel incentive program to reduce halibut bycatch rates in the groundfish fisheries as proposed in Amendments 16 and 21 was not approvable, the Council recommended that a revised amendment be initiated to conform to the requirements of applicable law.

Response: The Council submitted a revised vessel incentive program for Secretarial review under section 304(b)(3) of the Magnuson Act. The Secretary published a notice in the Federal Register stating that the revised amendments are available and that written data, views, or comments of interested persons on the amendments may be submitted to the Secretary during the 35-day period beginning on December 6, 1990. The Secretary is reviewing the proposed regulations for the revised amendments submitted by the Council and will publish them in the Federal Register. Before the close of February 1, 1991, the Secretary will complete his review and determine if the revised amendments conform to the Magnuson Act and other applicable law.

Comment 19. The Council recommended that 50 CFR parts 672 and 675 be revised to allow any shortfalls or overages in seasonal apportionments of halibut PSCs in the GOA or halibut/crab PSCs in the BSAI to be accounted for in the subsequent season.

Response: The Secretary has responded to the Council's comment by changing final regulations at 50 CFR parts 672 and 675 to account for shortfalls or overages in seasonal allocations of PSCs.

Comment 20. The Council recommended that the definition of pelagic trawl be revised as provided for in final regulations at 50 CFR 672.2 and 675.2. Significant changes are in the minimum mesh size of 64 inches instead of one meter behind the fishing line, and specific prohibition on the use of discs, bobbins, rollers, or other chafe protection gear attached to the foot rope that would make it suitable for contact with the seabed. Because a pelagic trawl is commonly fished in frequent contact with the seabed, the larger mesh size is intended to enhance release of halibut and crab if captured.

Response: The Secretary has responded to the Council's comment by changing final regulations accordingly.

Classification

The Regional Director determined that the FMP amendments are necessary for the conservation and management of the groundfish fisheries in the Gulf of Alaska and in the Bering Sea/Aleutian Islands and that they are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Council at the above address.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The determination is based on the EA/RIR/FRFA prepared by the Council. A copy of the EA/RIR/FRFA may be obtained from the Council at the above address.

The Assistant Administrator concludes that this rule, if adopted, would have significant effects on small entities. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Council at the above address.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Since the appropriate state agency did not reply within the statutory time period, consistency is automatically inferred.

The Federalism Official for the Department of Commerce determined that Amendment 21 and the proposed rule had sufficient federalism implications to warrant preparation of a Federalism Assessment (FA) under Executive Order 12612 (E.O. 12612). An FA was prepared and is available, upon request, at the above address. The FA contains the Federalism Official's certification that the provisions and policies of Amendment 21 and the implementing rule are consistent with the federalism principles, criteria, and requirements set forth in sections 2 through 5 of E.O. 12612. Amendment 21 and the final rule do not appear to affect Alaska's ability to discharge traditional State governmental functions, or other aspects of State sovereignty; additional costs or burdens to the State are not expected.

This rule must be effective as early as possible in 1991 to achieve an orderly prosecution of the groundfish fisheries off Alaska for the 1991 fishing season and to derive meaningful conservation benefits. Consequently, the Assistant Administrator finds for good cause that it is contrary to the public interest to delay for 30 days the effective date of this rule under section 553(d) of the APA in order to have this action effective as early as possible near the beginning of the 1991 fishing season.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries, Fishing vessels, Reporting and recordkeeping.

Dated: January 9, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611, 672 and 675 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.* and 16 U.S.C. 1361 *et seq.*

2. Section 611.93 is amended by adding paragraph (b)(5) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(5) *Receiving groundfish prohibited.* Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipts of U.S.-harvested groundfish that are composed of yellowfin sole, rock sole, and "other flatfish" in the aggregate in any amount greater than or equal to 20 percent of the

total amount of groundfish received as described under § 675.21(b)(4)(v) is prohibited in any bycatch limitation zone or area defined in § 675.2 of this title when the JVP bycatch allowance pertaining to such bycatch limitation zone or area, as specified under § 675.21(c)(1) of this title, has been attained.

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA

3. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 672.1, a new paragraph (d) is added to read as follows:

§ 672.1 Purpose and scope.

* * * * *

(d) The following State of Alaska regulations are not preempted by this part for vessels regulated under this part fishing or demersal shelf rockfish in the Eastern Regulatory Area, and which are registered under the laws of the State of Alaska:

5 AAC 28.110.	Fishing seasons.
5 AAC 28.130.	Gear.
5 AAC 28.160.	Harvest guidelines.
5 AAC 28.170.	Possession and landing requirements.
5 AAC 28.190.	Harvest of bait by commercial permit holders.

§ 672.2 [Amended]

4a. Figure 1 in § 672.2 and Figure 2 in § 672.24 are redesignated as Figures 1 and 2 to part 672 and will appear at the end of the part.

5. In § 672.2, the definition of *Bottom trawl* is removed. The definitions of *Breast line, Fishing line, Foot rope, Head rope, Hook-and-line, Jig, Pelagic trawl, Pot-and-line,* and *Pot-and-longline* are added alphabetically to read as follows:

§ 672.2 Definitions.

* * * * *

Breast line means the rope or wire running along the forward edges of the side panels of a net, or along the forward edge of the side rope in a rope trawl.

* * * * *

Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached.

Foot rope means a chain or wire rope attached to the bottom front end of a trawl and attached to the fishing line.

* * * * *

Head rope means a rope bordering the top front end of a trawl.

Hook-and-line means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device.

Jig means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device.

* * * * *

Pelagic trawl means a trawl which does not have discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, but which may have weights on the wing tips and

(1) Which has stretched mesh sizes of at least 64 inches, as measured between knots, starting at all points on the fishing line, head rope, and breast lines and extending aft for a distance of at least 10 meshes from the fishing line, head rope, and breast lines and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 20 inches between knots around the circumference of the net (Figure 3) and which contains no inserts or collars or other configurations intended to reduce the mesh size of the forward section, or

(2) Which has parallel lines spaced no closer than 64 inches, combination of parallel lines and meshes with stretched mesh sizes of at least 64 inches, measured as described in paragraph (1) of this definition, for a distance of at least 33 feet, and starting at all points on the fishing line, head rope, and breast lines and going around the entire circumference of the trawl (Figure 4).

Pot-and-line means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device.

Pot-and-longline means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

* * * * *

6. In § 672.20, a heading for paragraph (f)(2) is added, paragraphs (f)(1), (f)(2)(i), and (f)(2)(ii) are revised, paragraphs (f)(2)(iii) and (f)(2)(iv) are redesignated as (f)(2)(iv) and (f)(2)(v), and new paragraph (f)(2)(iii) is added to read as follows:

§ 672.20 General limitations.

* * * * *

(f) * * *

(1) *Gear closures*—(i) *Trawl gear.* If, during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using trawl gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using trawl gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing by JVP or DAP vessels, as appropriate, with trawl gear other than pelagic trawl gear for the remainder of the season to which the PSC allocation applies.

(ii) *Hook-and-line gear.* If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using hook-and-line gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing by JVP or DAP vessels, as appropriate, with hook-and-line gear for the remainder of the season to which the PSC allocation applies.

(iii) *Pot gear.* If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using pot gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using pot gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing by JVP or DAP vessels, as appropriate, with pot gear for the remainder of the season to which the PSC allocation applies.

(iv) Unused PSC allocated to JVP trawl, hook-and-line, or pot gear, or to DAP trawl, hook-and-line, or pot gear will be added to its respective PSC allocation for the next season during a current fishing year.

(v) If a seasonal allocation to JVP trawl, hook-and-line, or pot gear, or to DAP trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal allocation is exceeded will be deducted from its respective allocation for the next season during a current fishing year.

(2) *Halibut PSC limits*—(i) *Notices of proposed halibut PSC limits.* After consultation with the Council, the Secretary will publish a notice in the **Federal Register** specifying the proposed halibut PSC limits for JVP vessels and DAP vessels using trawl and hook-and-line gear; the notice may also specify halibut PSC limits for JVP vessels and DAP vessels using pot gear. Each halibut PSC limit may be apportioned among the regulatory areas and districts of the

Gulf of Alaska, and may be allocated by season under paragraph (f)(2)(iii) of this section. Public comments on these proposals will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register.

(ii) *Notices of final halibut PSC limits.* The Secretary will consider comments received on proposed halibut PSC limits and, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final halibut PSC limits and seasonal allocations thereof. A notice of these determinations will be published in the **Federal Register** on, or as soon as practicable after, January 1 of the new fishing year and also will be made available to the public by the Regional Director through other appropriate means.

(iii) The Secretary will base any seasonal allocations of the halibut PSC limits on the following types of information:

(A) Seasonal distribution of halibut,

(B) Seasonal distribution of target groundfish species relative to halibut distribution,

(C) Expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species,

(D) Expected variations in bycatch rates throughout the fishing year,

(E) Expected changes in directed groundfish fishing seasons,

(F) Expected start of fishing effort, and

(G) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

* * * * *

7. In § 672.24, paragraph (c) is redesignated as paragraph (d), paragraph (b) is redesignated as paragraph (c) and paragraph (c) is retitled to read *Gear allocations*, and a new paragraph (b) is added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(b) *Gear restrictions.* (1) Each pot used to fish for groundfish must be equipped with a biodegradable panel at least 18 inches in length that is parallel to, and within 6 inches of, the bottom of the pot, and which is sewn up with untreated cotton thread of no larger size than #30.

(2) Each pot used to fish for groundfish must be equipped with rigid tunnel openings that are no wider than 9 inches and no higher than 9 inches, or soft tunnel openings with dimensions that are no wider than 9 inches.

* * * * *

7a. Figures 3 and 4 are added to part 672 as follows:

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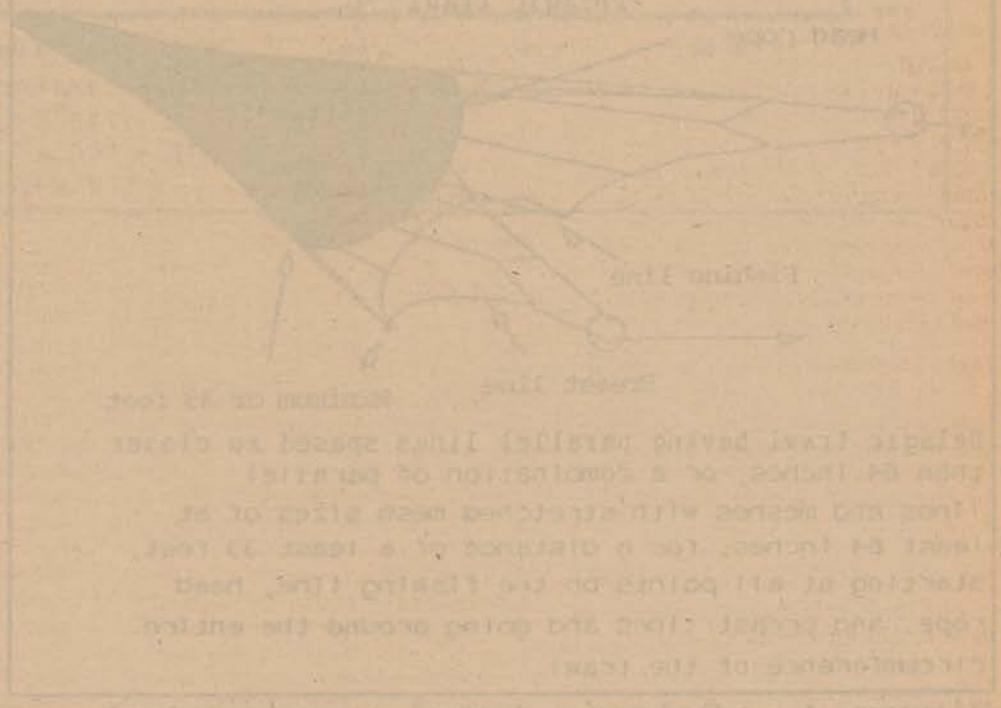

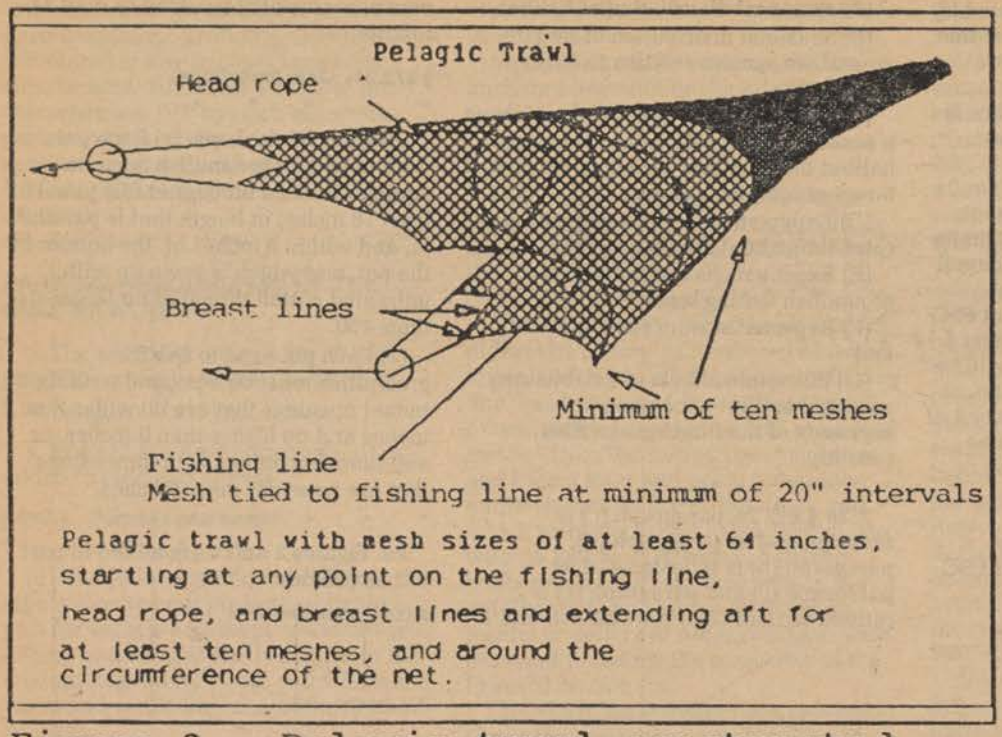

Figure 3. Pelagic trawl constructed with webbing attached from the fishing line, head rope, and breast lines.

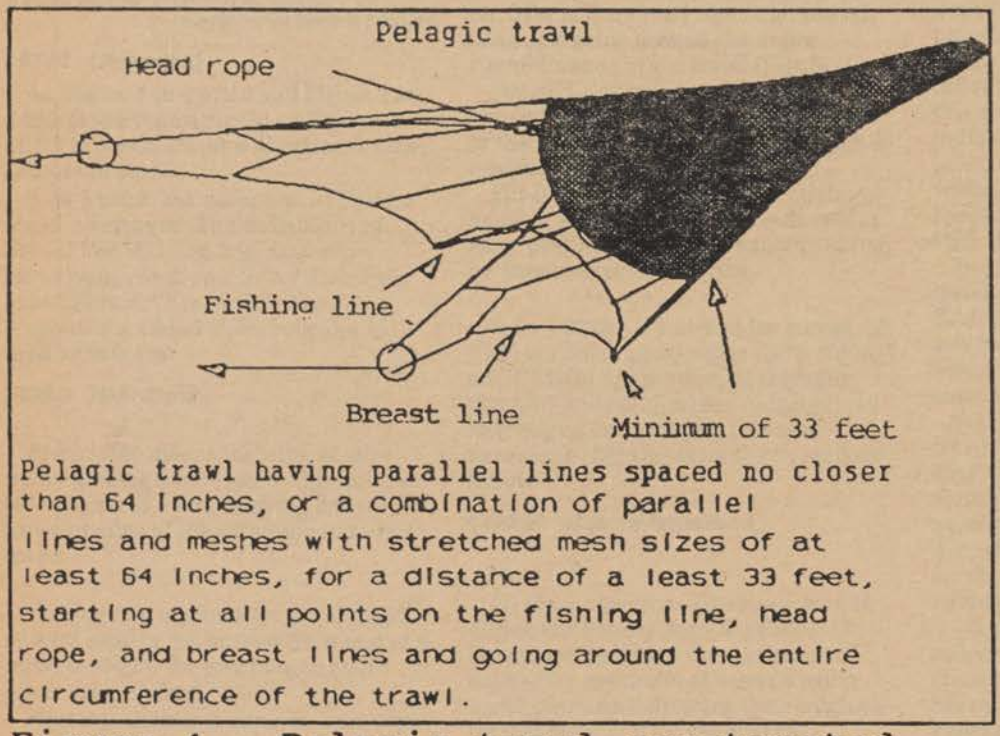

Figure 4. Pelagic trawl constructed with ropes, or combinations of ropes and meshes, from the fishing line, head rope, and breast lines.

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PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Authority: 16 U.S.C. 1801 *et seq.*

8. The authority citation for 50 CFR part 675 continues to read as follows:

8a. Figures 2, 3 and 4 are added to part 675 as follows:

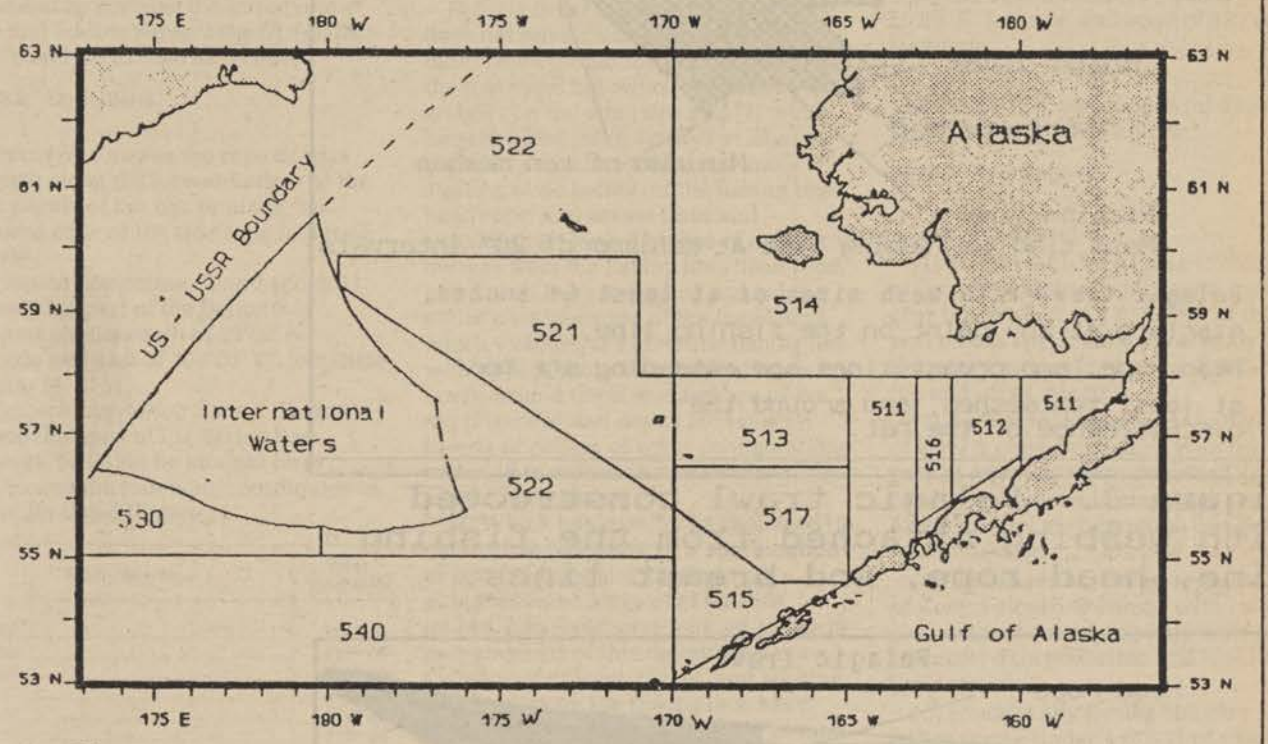

Figure. 2 Statistical reporting areas in the BS/AI
Zone 1 = 511 + 512 + 516
Zone 2 = 513 + 517 + 521
Zone 2H = 517

BILLING CODE 3510-22-M

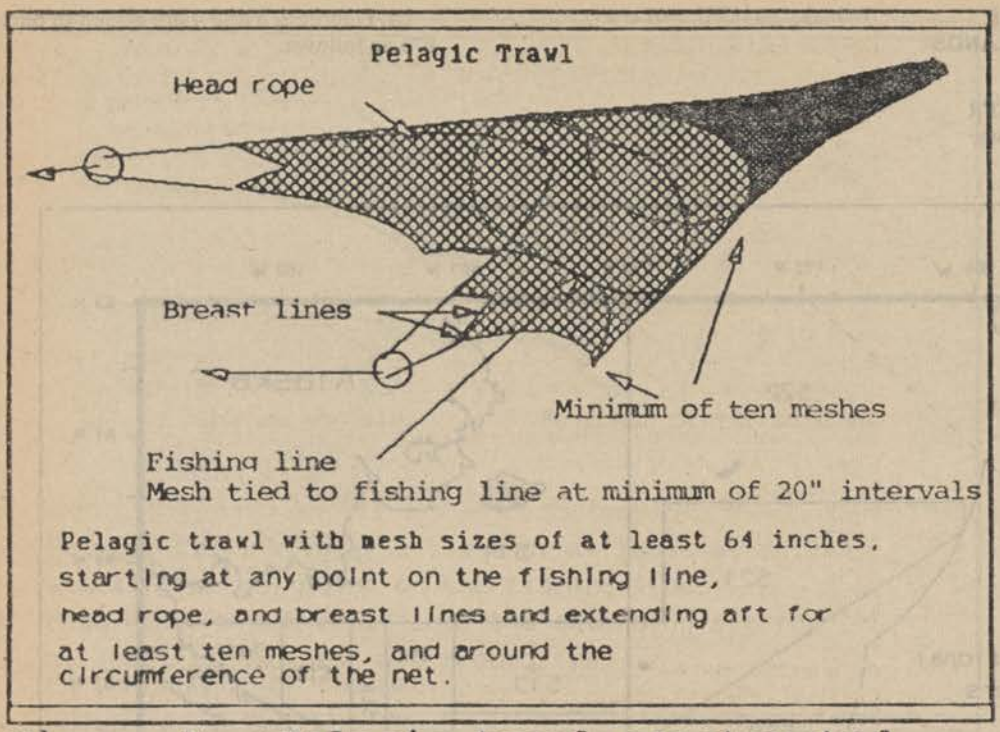

Figure 3. Pelagic trawl constructed with webbing attached from the fishing line, head rope, and breast lines.

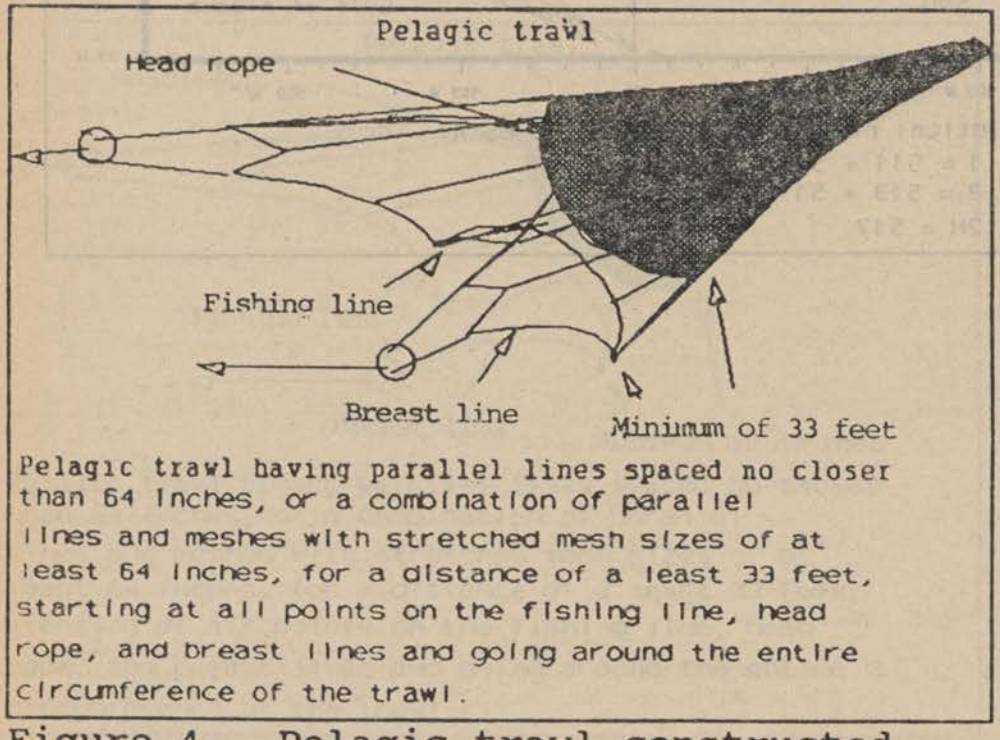

Figure 4. Pelagic trawl constructed with ropes, or combinations of ropes and meshes, from the fishing line, head rope, and breast lines.

9. In § 675.2, The definition of *Bottom trawl* is removed; the definitions of Breast line, *Bycatch Limitation Zone 1*, *Bycatch Limitation Zone 2*, *Bycatch Limitation Zone 2H*, *Fishing line*, *Foot rope*, *Head rope*, *Hook-and-line*, *Jig*, *Pelagic trawl*, *Pot-and-line*, and *Pot-and-longline* are added alphabetically. The definition of "statistical area" is amended by revising the introductory text and adding paragraphs (f), (g), (h), (i), (j), and (k) to read as follows:

§ 675.2 Definitions.

* * * * *

Breast line means the rope or wire running along the forward edges of the side panels of the net, or along the forward edge of the side rope in a rope trawl.

Bycatch Limitation Zone 1 (Zone 1) means that part of the Bering Sea Subarea that is south of 58°00′ N. latitude and east of 165°00′ W. longitude (Figure 2).

Bycatch Limitation Zone 2 (Zone 2) means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates in the order listed (Figure 2):

North latitude	West longitude
54° 30′	165° 00′
58° 00′	165° 00′
58° 00′	171° 00′
60° 00′	171° 00′
60° 00′	179° 20′
59° 25′	179° 20′
54° 30′	167° 00′
54° 30′	165° 00′

Bycatch Limitation Zone 2H means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates (Figure 2):

North latitude	West longitude
54° 30′	165° 00′
56° 30′	165° 00′
56° 30′	170° 00′
55° 42′	170° 00′
54° 30′	167° 00′
54° 30′	165° 00′

* * * * *

Fishing line means a length of chain or wire rope in the bottom front end of a trawl to which the webbing or lead ropes are attached.

* * * * *

Foot rope means a chain or wire rope attached to the bottom front end of a trawl and attached to the fishing line.

* * * * *

Head rope means a rope bordering the top front end of a trawl.

Hook-and-line means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device.

Jig means a single non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device.

* * * * *

Pelagic trawl means a trawl which does not have discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, but which may have weights on the wing tips and (1) which has stretched mesh sizes of at least 64 inches, as measured between knots, starting at all points on the fishing line, head rope, and breast lines and extending aft for a distance of at least 10 meshes from the fishing line, head rope, and breast lines and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 20 inches between knots around the circumference of the net (Figure 3) and which contains no inserts or collars or other configurations intended to reduce the mesh size of the forward section, or

(2) Which has parallel lines spaced no closer than 64 inches, or a combination of parallel lines and meshes with stretched mesh sizes of at least 64 inches, measured as described above in paragraph (1) of this definition, for a distance of at least 33 feet, and starting at all points on the fishing line, head rope, and breast lines and going around the entire circumference of the trawl (Figure 4).

Pot-and-line means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device.

Pot-and-longline means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

* * * * *

Statistical area means any one of the eleven statistical areas of the Bering Sea and Aleutian Islands management area defined as follows (Figure 2):

* * * * *

(f) Statistical Area 516—that part of Statistical Area 511 that is south of 58 °N. lat. and between 162° and 163 °W. long.;

(g) Statistical Area 517—that part of Statistical Area 513 that is south of 56°30′ N. lat. and between 165 ° and 170 °W. long.;

(h) Statistical Area 521—that part of Statistical Area 522 bounded by straight lines connecting the following coordinates in the order listed: 55°46′ N. 170°00′ W., 59°25′ N., 179°20′ W., 60°00′ N., 179°20′ W., 60°00′ N., 171°00′ W., 58°00′ N., 171°00′ W., 58°00′ N., 170°00′ W., and 55°46′ N., 170°00′ W.

(i) Statistical area 522—north of 55°00′ N. latitude, west of 170°00′ W. longitude, and east of 180°00′ longitude;

(j) Statistical area 530—north of 55°00′ N. latitude, and west of 180°00′ longtitude;

(k) Statistical area 540—south of 55°00′ N. latitude, and west of 170°00′ W. longitude.

* * * * *

10. In § 675.7, paragraphs (c) and (d) are added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(c) Use a vessel:

(1) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear in violation of § 675.22(a) of this part unless specifically allowed by the Secretary as provided under § 675.22 (b), (c), and (d) of this part;

(2) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear at any time when no scientific data collection and monitoring program exists or after such program has been terminated; or

(3) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear without complying fully with a scientific data collection and monitoring program; or

(d) conduct any fishing contrary to a notice issued under § 675.21 of this part.

11. In § 675.20, add the phrase "or PSC allowance" after the phrase "PSC limits" in paragraph (e)(1)(iii) and after the phrase "PSC limit" in both places where it appears in paragraph (e)(2)(ii).

12. In § 675.20, paragraph (b)(1)(ii) is revised and (e)(4) is added as follows:

§ 675.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(ii) *Apportionment between DAP and JVP.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary will, by notice in the **Federal Register**, reassess and reapportion to DAP the part of JVP needed by DAP, or reassess and reapportion to JVP the part of DAP that he determines will not be harvested by U.S. vessels and delivered to U.S. processors during the remainder of the fishing year, unless such reapportionments to JVP would adversely affect the conservation of groundfish or prohibited species or would have an adverse impact on the

socioeconomic considerations set forth in paragraph (a)(2)(i)(B) of this section.

* * * * *

(e) * * *

(4) The adjustment of a TAC or PSC limit or PSC allowance for any species under paragraph (e)(1)(iii) of this section must be based on the available scientific information concerning the biological stock status and harvest of the species in question and on the Regional Director's determination that the currently specified TAC or PSC limit or PSC allowance is incorrect. Any adjustment to a TAC or PSC limit or PSC allowance must be reasonably related to a change in biological stock status, except that a PSC limit or PSC allowance may be adjusted if it was incorrectly specified due to a calculation error or to allow redistribution of uncaught PSC allowances among fisheries.

* * * * *

13. Section 675.21 is added to read as follows:

§ 675.21 Prohibited species catch (PCS) limitations.

(a) *PSC limits.* (1) The PSC limit of red king crab caught while conducting any DAH trawl fishery for groundfish in Zone 1 during any fishing year is 200,000 red king crabs.

(2) The PSC limit of Tanner crabs (*C. bairdi*) caught while conducting any DAH trawl fishery for groundfish in Zone 1 during any fishing year is 1 million animals.

(3) The PSC limit of Tanner crabs (*C. bairdi*) caught while conducting any DAH trawl fishery for groundfish in Zone 2 during any fishing year is 3 millions animals.

(4) The primary PSC limit of Pacific halibut caught while conducting any DAH trawl fishery for groundfish in the Bering Sea and Aleutian Islands Managment Area during any fishing year is an amount of Pacific halibut equivalent to 4,400 metric tons.

(5) The secondary PSC limit of Pacific halibut caught while conducting any DAH trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 5,333 metric tons.

(b) *Apportionment of PSC limits*—(1) *Apportionment to fishery categories.* The Secretary, after consultation with the Council, will apportion each PSC limit into bycatch allowances that will be assigned to the target fishery categories specified in paragraph (b)(4) of this section, based on each fishery's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

(2) *Seasonal apportionments of bycatch allowances.* The Secretary, after consultation with the Council, may apportion fishery bycatch allowances on a seasonal basis. The Secretary will base any seasonal apportionment of a bycatch allowance on the following types of information:

(i) Seasonal distribution of prohibited species;

(ii) Seasonal distribution of target groundfish species relative to prohibited species distribution;

(iii) Expected prohibited species bycatch needs on a seasonal basis relevant to change in prohibited species biomass and expected catches of target groundfish species;

(iv) Expected variations in bycatch rates throughout the fishing year;

(v) Expected changes in directed groundfish fishing seasons;

(vi) Expected start of fishing effort; and

(vii) Economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry.

(3) The Secretary will publish annually in the **Federal Register** proposed and final bycatch allowances and seasonal apportionments in the notices required under § 675.20(a)(7) of this part. Public comment will be accepted by the Secretary on the proposed bycatch allowances and seasonal apportionments for a period of 30 days after the notice of them is filed for public inspection in the Office of the Federal Register.

(4) For purposes of this section, five domestic fisheries are defined as follows:

(i) *DAP Greenland turbot fishery* means DAP fishing with trawl gear during any weekly reporting period that results in retained amounts of Greenland turbot and arrowtooth flounder, in the aggregate, that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents.

(ii) *DAP rock sole fishery* means DAP fishing with trawl gear during any weekly reporting period that (A) results in retained amounts of rock sole that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents, and (B) does not qualify as a "DAP Greenland turbot fishery."

(iii) *DAP flatfish fishery* means DAP fishing with trawl gear during any weekly reporting period that (A) results in retained amounts of yellowfin sole and "other flatfish," in the aggregate, that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents, and (B) does not qualify as a "DAP Greenland turbot fishery" or "DAP rock sole fishery."

(iv) *DAP other fishery* means DAP fishing with trawl gear during any weekly reporting period that results in retained amounts of any other combination of groundfish species calculated in round weight equivalents that would not qualify as a "DAP Greenland turbot fishery," "DAP rock sole fishery," or "DAP flatfish fishery."

(v) *JVP flatfish fishery* means JVP fishing with trawl gear during any weekly reporting period which results in deliveries to foreign vessels of amounts of yellowfin sole, rock sole, and "other flatfish," in aggregate amounts, that are 20 percent or more of the total amount of groundfish delivered calculated in round weight equivalents.

(c) *Attainment of a PSC allowance or seasonal apportionment of the PSC allowance.*—(1) *By the DAP flatfish, rock sole, or turbot fisheries or the JVP flatfish fishery.* (i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch either of the PSC allowances or seasonal apportionment of the PSC allowances of red king crabs or *C. bairdi* in Zone 1 while participating in either the DAP flatfish, DAP rock sole, DAP turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing Zone 1 to vessels engaging in that directed fishery for the remainder of the fishing year or for the remainder of the season.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the PSC allowance or seasonal apportionment of the PSC allowance of *C. bairdi* in Zone 2 while participating in either the DAP flatfish, DAP rock sole, DAP turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing Zone 2 to vessels engaging in that directed fishery for the remainder of the fishing year or for the remainder of the fishing season.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will

catch the primary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in either the DAP flatfish, DAP rock sole, DAP turbot, or JVP flatfish fisheries as determined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing Zones 1 and 2H to vessels engaging in that directed fishery for the remainder of the fishing year or for the remainder of the fishing season.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in either the DAP flatfish, DAP rock sole, DAP turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the entire Bering Sea and Aleutian Islands Management Area to vessels engaging in that directed fishery for the remainder of the fishing year or for the remainder of the fishing season.

(2) *By the "DAP other fisheries."*

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances or seasonal apportionments of PSC allowances of red king crabs or *C. bairdi* in Zone 1 while participating in the "DAP other fishery" as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing Zone 1 for the remainder of the year or for the remainder of the fishing season to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance or seasonal apportionment of the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing Zone 2 for the remainder of the year or for the remainder of the fishing season to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing Zones 1 and 2H for the remainder of the fishing year or for the remainder of the season to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing the Bering Sea and Aleutian Islands Management area for the remainder of the year or remainder of the season to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products retained by the vessel during a weekly reporting period.

(3) Unused seasonal apportionments of fishery bycatch allowances made under paragraph (b)(2) of this section will be added to its respective fishery bycatch allowance for the next season during a current fishing year.

(4) If a seasonal apportionment of a fishery bycatch allowance made under paragraph (b)(2) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year.

14. In § 675.22 which currently consists of paragraph (f), paragraphs (a) through (e) are added to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea subarea that is south of 58°00'N. latitude and between 160°00'W. longitude and 162°00'W. longitude (see figure 2) except as described in paragraph (c) of this section.

(b) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea subarea that is south of 58°00'N. latitude and between 162°00'W. longitude and 163°00'W. longitude during the period March 15 through June 15 except as described in paragraph (d) of this section.

(c) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56°43'N. latitude, 160°00'W. longitude, and 56°00'N. latitude 162°00'W. longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(d) During the period of March 15 through June 15, the Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (b) of this section that lies south of the line connecting 56°00'N. latitude, 162°00'W. longitude, and 55°38'N. latitude 163°00'W. longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(e) If the Regional Director determines that vessels fishing with trawl gear in the areas described in paragraphs (c) and (d) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately prohibit all fishing with trawl gear in those areas by notice in the **Federal Register**.

* * * * *

§ 675.22 [Amended]

15. Section 675.22(f), which was added December 6, 1989 (54 FR 50386), is amended by revising the coordinates of Cape Peirce to read: "(58°33'N. latitude, 161°43'W. longitude)."

16. Section 675.24 is amended, by redesignating paragraphs (a) and (b) as

(c)(1) and (c)(2), redesignating paragraph (d) as paragraph (a), redesignating original paragraph (c) as (d), and adding new paragraph (b) and a heading for redesignated paragraph (c) to read as follows:

§ 675.24 Gear limitations.

* * * * *

(b) *Gear restrictions.* (1) Each pot used in groundfish fisheries must have a biodegradable panel at least 18 inches in length that is parallel to, and within 6 inches of, the bottom of the pot, and which is sewn up with untreated cotton thread of no larger size than #30.

(2) All pots used in the groundfish fisheries must have rigid tunnel openings that are no wider than 9 inches and no higher than 9 inches, or soft tunnel openings that are no wider than 9 inches in diameter.

(c) *Gear allocations* * * *

* * * * *

17. Table 2 following § 675.21 (1989 Prohibited Species Catch Allowances) is removed.

[FR Doc. 91-1071 Filed 1-18-91; 4:07 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 16
Thursday, January 24, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 620, and 621

RIN 3052-AB20

Organization; Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, publishes for comment proposed amendments to 12 CFR parts 611, 620, and 621 to implement changes made necessary as a result of the amendment of the Farm Credit Act of 1971 (1971 Act), as amended by the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100-233). The proposed amendments include technical amendments necessary to recognize the structural changes in Farm Credit institutions and changes in lending authority required or authorized by the 1987 Act. The proposed amendments would also require additional disclosures due to the changes in the capital structure of Farm Credit institutions and the implementation of the FCA capital adequacy regulations, the establishment of the Farm Credit System Insurance Corporation, the establishment of the Federal Agricultural Mortgage Corporation, new authorities to participate in secondary market activities, and purchases and sales of loans. Other proposed amendments modify existing requirements for preparing, distributing, and filing reports, incorporate changes to and clarification of generally accepted accounting principles, and clarify the existing disclosure requirements.

DATES: Comments should be received on or before February 25, 1991.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
Tong-Ching Chang, Staff Accountant, Policy and Risk Analysis Division, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4483, TDD (703) 883-4444;
or
Joy Strickland, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The proposed regulation amendments discussed below are of three types: (1) Technical amendments addressing changes in the structure and lending authority of Farm Credit institutions; (2) amendments requiring disclosures related to capital issues, obligations insured by the Farm Credit System Insurance Corporation (FCSIC), obligations issued by the Farm Credit System Financial Assistance Corporation, purchases and sales of loans, participation in secondary market activities, and enforcement actions; and (3) other procedural, technical, and conforming changes. The proposed amendments also clarify existing regulations where appropriate. In addition, the proposed amendments would revise and clarify the definition of "formally restructured loans" contained in part 621, subpart A.

I. Proposed Technical Amendments Addressing Changes in the Structure and Lending Authority of Farm Credit Institutions

The 1987 Act required the merger of Federal land banks (FLBs) and Federal intermediate credit banks (FICBs) in each Farm Credit district to form Farm Credit Banks (FCBs) and authorized the merger of Federal land bank associations (FLBAs) or Federal land credit associations (FLCAs) with production credit associations (PCAs) to form agricultural credit associations (ACAs) and the merger of FCBs with banks for cooperatives (BCs) to form agricultural credit banks (ACBs). In addition, the 1987 Act authorized the transfer of long-term real estate lending authority from an FCB to an FLBA when approved by the shareholders of both institutions, resulting in an FLCA. The 1987 Act requires such a transfer when an FLBA merges with a PCA to form an ACA. The FCA proposes technical amendments to update the language throughout part 620 to reflect the above provisions of the 1987 Act.

II. Proposed Amendments Requiring Disclosure Related to Capital Issues, Obligations Insured by the Farm Credit System Insurance Corporation, Obligations Issued by the Farm Credit System Financial Assistance Corporation, Purchases and Sales of Loans, Participation in Secondary Market Activities, and Enforcement Actions

A. Capital Issues

The 1987 Act made significant changes in the capital structure of Farm Credit institutions including the addition of a new requirement to retire "eligible borrower stock" at par value upon repayment of a loan, whether or not such stock is impaired (see section 4.9A of the 1971 Act). "Eligible borrower stock" is defined as stock, participation certificates, and allocated equities issued or allocated to persons other than Farm Credit System institutions, that were outstanding on the date of enactment of section 4.9A or issued after the date of enactment as a condition of obtaining a loan, but before the earlier of 9 months from enactment of section 4.9A or the date the institution adopts capitalization bylaws to reflect the 1987 Act, which amended the 1971 Act. In addition, the 1987 Act added section 4.3A to the 1971 Act, which provides that stock issued in accordance with the bylaws of the Farm Credit banks and associations, except eligible borrower stock, can only be retired at the discretion of each institution's board of directors. Section 4.3A also provides that the board of directors of an institution may not reduce the institution's permanent capital through the payment of patronage refunds or dividends or stock retirement if, after or due to such action, the institution would fail to meet its minimum capital adequacy standards. The section defines "permanent capital" to include current year retained earnings, allocated and unallocated earnings, all surplus (less allowance for losses), and stock issued

by a System institution, except eligible borrower stock or stock that may be retired at the option of the holder. In order to implement section 4.3A of the 1971 Act, the FCA promulgated regulations in part 615, subpart H, requiring each Farm Credit institution to meet minimum capital standards and to determine the amount of capital needed to assure that the institution remains financially sound and continues to meet the needs of its borrowers. As a result of the above statutory and regulatory provisions, the FCA is proposing new disclosure requirements in part 620 to address changes in capital adequacy requirements as a result of the 1987 Act.

1. Capital Adequacy Issues

The proposed regulation would amend existing § 620.3 to require additional disclosure to reflect the above statutory and regulatory requirements regarding the capital adequacy of Farm Credit institutions and redesignate it as § 620.5. Proposed paragraph (d)(1)(ix) of the redesignated § 620.5 would require that institutions disclose the statutory and regulatory restriction on the distribution of earnings and retirement of stock when capital standards are not met (§ 615.5215) and the regulatory requirement that banks for cooperatives add annual amounts to unallocated surplus until the unallocated surplus reaches half of the institutions' minimum permanent capital requirements (§ 615.5330). Proposed § 620.5(d)(3) would require the institution to state whether it is currently subject to any such restrictions or requirements or knows of any reason it will be subject to such a requirement during the fiscal year subsequent to the fiscal year just ended. Additionally, proposed § 620.5(d)(2) would require an institution to describe the regulatory minimum permanent capital standards established in part 615, the institution's capital adequacy requirement, and the minimum stock purchase requirement in effect.

The proposed § 620.5(g)(4) would also require additional disclosure in management's discussion and analysis. Each institution would be required to discuss the adequacy of its permanent capital position and any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect upon the institution's capital adequacy or its ability to meet minimum permanent capital standards. In addition, each institution would be required to disclose any foreseeable material change in its capital plan adopted pursuant to § 615.5200 that may have an effect on the institution's minimum stock purchase requirements of its ability to retire stock and distribute earnings.

The FCA believes that these additional disclosures are necessary to provide the shareholders with meaningful information regarding the capital adequacy of the institution. Such information is believed to be material because the financial position of the institution and the ability of the institution to generate and distribute earnings are affected by the capital position of the institution.

2. Effect of Changes in Capital Structure of Key Financial Ratios and Financial Statements

Because section 4.9A of the 1971 Act requires institutions to retire "eligible borrower stock" at par value and section 4.3A provides that such protected borrower stock cannot be counted as permanent capital to satisfy regulatory capital requirements, such stock should be distinguished from stock that is considered permanent capital in the financial statements, financial summaries, and computations of certain capital ratios. Therefore, the FCA proposes to amend § 620.5(f) to make the necessary changes. For the purpose of computing capital ratios, new definitions of "protected borrower stock" and "net worth" are proposed. The proposed definition of the term "net worth" would include both protected borrower stock and stock that qualifies as permanent capital. While in common usage the term "protected borrower stock" may be interchangeable with "eligible borrower stock," it is technically more descriptive of the characteristics of the stock than the statutory term.

The proposed amendments would require that protected borrower stock be reported separately from permanent capital under the caption "net worth." Proposed § 620.5(f)(1)(i) would require that each institution's report include the following ratios: the return on average net worth, permanent capital ratio, and net worth to assets. A conforming change to § 620.5(g)(2)(iii) is also proposed to require the reporting institution to include an explanation of its basis for computation of these ratios.

The proposed amendments would delete the definition of "risk funds" and the requirement to present a debt-to-capital ratio. In view of the focus in the capital regulations on capital adequacy and the minimum permanent capital standards, the concepts of risk funds and debt-to-capital are believed to be less meaningful to shareholders.

B. Insured Obligations, Obligations Issued by the Farm Credit System Financial Assistance Corporation, Purchases and Sales of Loans, and Participation in Secondary Market Activities

Sections 5.51 and 5.60 of the 1971 Act provide for the insurance of certain obligations of banks by the Farm Credit System Insurance Corporation. In response to these provisions, a new disclosure requirement is proposed in § 620.5(e)(1) which would require banks to describe outstanding obligations as either insured or uninsured to reflect the nature of the obligation.

Proposed § 620.5(e)(4) would impose a new disclosure requirement to reflect the statutory responsibility of System institutions for repayment of obligations issued by the Farm Credit System Financial Assistance Corporation in accordance with § 6.26 of the 1971 Act. The FCA believes this disclosure is needed because repayment of principal or interest of an obligation issued by the Farm Credit System Financial Assistance Corporation may have a significant impact on the financial condition of a reporting institution and consequently may significantly affect a shareholder's investment in the institution.

The disclosure required in existing regulations would not reflect the institution's sales and purchases of loans or its participation in secondary market activities, which was authorized by the 1987 Act. Certain Farm Credit institutions have authority to sell interests in loans to other lending institutions that are not Farm Credit institutions, in addition to the recently granted authority to participate in secondary market activities through Federal Agricultural Mortgage Corporation (Farmer Mac) programs. Since the sale of loans is likely to increase as a result of the 1987 Act, the FCA proposes to revise the existing definition of "loans" to clarify that the definition includes purchased interests in loans, including subordinated participation interests in loans sold, and interests in pools of subordinated interests that are held in lieu of retaining a subordinated participation interest in loans sold. Proposed § 620.5 (g)(1)(iv)(E) and (g)(3)(ii)(C) would require an institution to describe its participation in Farmer Mac secondary market activities and any activity in origination of loans for resale. Further, the institution would be required to disclose the amounts of purchased loans, loans sold with recourse, retained subordinated participation interests in

any loans sold, and any interests in pools of subordinated participation interests or contributions to the reserve described in § 8.7 of the 1971 Act that are held or made in lieu of retaining a subordinated participation interest in the loans sold. The institution would also be required to disclose the actual risk associated with the quality of these assets.

Proposed § 260.5(a)(9) would substitute the term "related Farm Credit institution," as described in § 619.9146 for "related Farm Credit organizations." The effect of the change would be to require the institution to describe the business of any service corporation in which it has an ownership interest, including any service corporation organized to participate in secondary market activities.

C. Disclosure of Enforcement Actions

Proposed § 620.5(c)(2) would require each institution to describe the existence and nature of any enforcement actions, i.e., agreements, cease and desist orders, temporary cease and desist orders, suspensions or removals of officers or directors, or civil money penalties, imposed or assessed on the institution or its officers or directors. If civil money penalties have been assessed, the institution would also be required to disclose the amount of such penalties.

III. Other Proposed Procedural, Technical, and Conforming Amendments

The proposed amendments include many procedural and technical changes to part 620. A new Subpart A—General is proposed which would contain definitions and other general provisions that would be applicable to all disclosure statements required by part 620. Specific requirements pertaining to individual reports remain in the applicable subparts. As a result of the addition of subpart A and the redesignation of other sections, conforming amendments are proposed to part 611 where appropriate.

A. Definitions

The proposed amendments use the same definitions contained in existing regulations to the extent possible. However, to reflect the structural changes in Farm Credit institutions, new definitions for "association," "bank," and "direct lender association" would be added which refer to definitions of the terms in part 619. Also, definitions of the terms "related association" and "related bank" would be added which would replace the references to "district bank" and "associations in the district." The proposed amendment would also amend the existing definition of "normal risk of collectibility" to clarify that loans having a greater than normal risk of collectibility may also include loans other than nonperforming loans.

B. General Preparation and Filing Requirements

Proposed § 620.2(a) would require that each institution file three copies of the reports or information statement required by this part with the FCA offices designated by the Chief Examiner, instead of filing all reports directly with the Chief Examiner. Under the proposed regulation, the reports filed must be received by the FCA within the period that the reports are required to be distributed to shareholders. Under the proposed paragraph, each association would also be required to make annual and quarterly reports of its related bank available for inspection by its shareholders.

C. Prohibition Against Incomplete, Inaccurate, or Misleading Disclosure

The FCA proposes a new § 620.3 that would expand the prohibition in existing §§ 620.22 and 620.32 against inaccurate or misleading disclosures in connection with an election to apply to any disclosures made by a Farm Credit institution or its officers, directors, or employees. Each institution, its employees, officers, directors, or nominees for directors of the institution would be prohibited from making incomplete and inaccurate or misleading disclosure to shareholders and the general public concerning any matters required to be disclosed by part 620.

D. Distribution of Bank Reports to Association Shareholders

When the current disclosure regulations were initially enacted, the FCA determined that due to the structure of the Farm Credit System (i.e., the FLBA/FLB relationship and the PCA/FICB relationship) and the impact the FLBs and FICBs had on the financial results of the FLBAs and PCAs, respectively, there was a need for shareholders of the associations to receive on a quarterly and annual basis the financial statements of the bank (which represent the combined statements of the bank and associations within the same Farm Credit district), in addition to the association reports. The current regulations do not specify that the entire bank report (which includes financial statements of the bank and combined financial statements of the bank and associations in the district as well as management discussion and analysis (MD&A)) is to be distributed to association shareholders. The proposed amendmends would clarify that the entire bank report must be distributed to the association shareholders rather than the financial statements only, as stated by the existing regulation.

In view of the structural changes that have resulted from the implementation of the 1987 Act and the prospect of increased autonomy and financial independence of associations, the FCA reexamined the requirement for routine distribution of bank quarterly reports to association shareholders. These changes, along with the new capital requirements and other provisions of the 1971 Act, are likely to result in greater autonomy for Farm Credit institutions. Nevertheless, the FCB and its related associations continue to be interdependent, and the condition of the bank could have a significant impact on the shareholders' investment in the associations. Due to these changed circumstances and the concern of Farm Credit institutions that routinely providing association shareholders with bank quarterly reports may not result in the most meaningful disclosure, the FCA proposes to require that the association's report be a more complete report of its financial condition, including disclosure of the impact of the related bank's operation on the association.

Therefore, proposed § 620.5(g)(2)(vi) would require each association to disclose its relationship with its related bank as well as any events, if known, affecting the bank that would also materially affect the association.

In addition to the proposed requirements for disclosure by an association of its relationship with the related bank, the proposed amendments would require the quarterly reports of the bank to be sent to association shareholders, except for quarters in which no significant events occur or no significant events continue to materially affect the bank and related associations. A definition of "significant event" would be added which would include any event that is likely to have a material impact on the reporting institution's financial condition, results of operations, cost of funds, and reliability of sources of funds. Significant events would include, but would not be limited to, actual or probable noncompliance with the regulatory minimum permanent capital standards or capital adequacy requirements, stock impairment, the imposition of or entering into enforcement actions, execution of financial assistance agreements with other institutions, collateral deficiencies that affect a bank's ability to obtain

loan funds, or defaults of debt obligations. While this list is not all inclusive, the FCA believes that the listed items are significant and, therefore, a bank would be required to distribute a quarterly report to association shareholders for the quarters in which any of the events listed occur or continue to have a material impact on the bank and related associations. For periods in which bank quarterly reports are not required to be distributed to association shareholders, the bank would be required to certify to the FCA that no significant events have occurred during the current quarter and no such events that occurred during previous quarters continue to have a material impact on related associations. The certification would be signed by the persons who are required to sign the quarterly report filed with the FCA. The proposed amendments would continue to require that bank quarterly reports be routinely distributed to shareholders of FLBAs that are not direct lender associations. Otherwise, FLBA shareholders would receive no quarterly report at all.

For periods in which quarterly bank reports are not distributed to association shareholders, proposed § 620.10(e) would require that the bank report be made available upon request. Proposed § 620.2 would require that the annual and quarterly report of the each Farm Credit institution include an address and telephone number of the location where association shareholders may obtain copies of bank quarterly information. Copies would be required to be available free of charge to association shareholders from both the issuing bank and the association.

To ensure that association shareholders recognize the relevancy of the bank financial information to the operations of the association and to their investment in the association, proposed § 620.2 would require that the annual report and quarterly reports of the association contain a statement that the shareholders' investment is materially affected by the financial condition of the related bank. In addition, should the proposed amendments be adopted, institutions would be required to disclose the regulatory changes in the method of distributing bank quarterly reports and new procedures under which the association shareholders would be able to obtain the bank quarterly reports in the first annual and first quarterly reports issued.

The FCA continues to believe that annual distribution of bank financial information to association shareholders is necessary to provide the shareholders with meaningful information, and this requirement would be preserved. By providing association shareholders with bank annual reports and bank quarterly reports upon the occurrence of significant events, and by making bank quarterly reports readily available upon request when no such significant events occur, the FCA believes that association shareholders will receive necessary and meaningful bank financial information.

E. Financial Statements and the Statement of Cash Flows

The proposed regulations contain amendments to reflect changes to generally accepted accounting principles (GAAP). In 1987, the Financial Accounting Standards Board implemented Statement of Financial Accounting Standards No. 95, which substituted the statement of cash flows for the statement of changes in financial position. In order to implement this change, the FCA proposes to amend § 620.5(m) by substituting the statement of cash flows for the statement of changes in financial position. Also, the FCA proposes to substitute the statement of changes in net worth for the statement of changes in capital to disclose changes in the amounts of protected borrower stock and permanent capital.

The statement of cash flows is, in part, intended to assess a reporting entity's ability to generate positive future net cash flows to meet its obligations and pay dividends and to assess its needs for external financing. Since associations obtain their funding from their related banks, and loan payments received are seasonal, the information provided in the statement of cash flows on a quarterly basis is less meaningful. Therefore, the FCA proposes to amend § 620.11(d) to require that banks publish the statement of cash flows on a quarterly basis and to authorize associations to publish quarterly statements of cash flows at their option.

F. Clarifications of Existing Requirements

The FCA proposes certain amendments to clarify existing provisions of the disclosure regulations. Proposed § 620.5(b) (currently § 620.3(b)) would be amended to clarify the term "principal offices" by adding the explanatory words "headquarters, and major facilities where the institution makes and services its loans." Paragraph (g) of § 620.5 would be amended to clarify that institutions are required to fully discuss "any material aspects of" the institution's financial condition and results of operations in its management's discussion and analysis for the annual report. The FCA also proposes to amend § 620.11 to clarify that, subject to the provisions provided in paragraph (b) of that section, the major captions to be provided in the interim financial statements are the same as those required in the financial statements contained in the institution's annual report. For the interim MD&A, the captions are not required to be the same as those in the annual report, and only those captions containing information that materially changes the information in the annual report need to be included.

The quarterly report is intended to be a concise but meaningful discussion of any material changes that have occurred since the end of the last fiscal year. It need not be voluminous to comply with the disclosure regulations. As the FCA has noted in the past, institutions may include information not required by the regulation; however, the disclosure of a large volume of information without clarity and focus does not necessarily constitute meaningful disclosure.

G. Miscellaneous Procedural, Technical, and Conforming Amendments

Several procedural and technical amendments are proposed throughout part 620. A description of several of the proposed amendments to § 620.5, which prescribes the content of the annual report to shareholders, follows. Section 620.5(a)(3) would be amended by requiring associations to disclose, or incorporate by reference to a bank's report if one is distributed, the lending and financial services offered by the related bank; paragraph (a)(4) is proposed to be amended by replacing the words "mergers or consolidations" with the words "changes in the reporting entity" to include reorganizations consummated pursuant to part 611, subpart O—Special Reconsideration of Mergers, as well as mergers and consolidations; paragraph (e)(2) is proposed to be amended to expand the existing wording "any other financial assistance agreement" to "any other form of financial assistance"; and paragraph (f) would be amended by adding "extraordinary items" to the list.

Also, § 620.5(f)(1)(i) is proposed to be amended by reversing the sequence of "obligations with maturities longer than 1 year" and "obligations with maturities less than 1 year"; paragraph (g)(1)(i) of § 620.5 is proposed to clarify that only associations that make agricultural production loans must disclose such loans by subcategory; and paragraph (g)(2)(ii) of § 620.5 is proposed to be

amended by removing the reference to other Farm Credit institutions, which would allow for the disclosure of assistance from any sources, including the Farm Credit System Assistance Board and the FCSIC.

Moreover, the FCA proposes to modify the definition of "formally restructured loans" in part 621 to clarify that the disclosure of formally restructured loans should be made in accordance with GAAP. Existing § 621.2(a)(8) refers to "formally restructured" as defined in Statement of Financial Accounting Standards (SFAS) No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructuring (SFAS No. 15), issued by the Financial Accounting Standards Board. The second sentence of § 621.2(a)(8) further states that, "After a loan is classified as 'formally restructured,' it shall continue to be classified as formally restructured until it is fully paid off or otherwise discharged." However, paragraph 40(a) of SFAS No. 15, which describes disclosure requirements for troubled debt restructuring, provides that "* * * receivable whose terms have been modified need not be included in that disclosure if, subsequent to restructuring, its effective interest rate * * * has been equal to or greater than the rate that the creditor was willing to accept for a new receivable with comparable risk." As a result, some have questioned whether the regulation adequately reflects the possibility that under SFAS No. 15 a restructured loan would no longer be considered formally restructured if, as a result of fluctuations in the interest rates on new receivables, the effective interest rate on a restructured loan is considered a market rate. Accordingly, to prevent any further confusion the FCA Board proposes to amend § 621.2(a)(8) by deleting the second sentence, which has been interpreted as requiring without exception that a loan continue to be classified and disclosed as "formally restructured" until it is fully paid off or otherwise discharged.

List of Subjects in 12 CFR Parts 611, 620, and 621

Accounting, Agriculture, Banks, Banking, Credit, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 620, and 621 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart L—Liquidation of Associations

§ 611.1168 [Amended]

2. Section 611.1168 is amended by removing the references, "subpart A", "§ 620.3", "§ 620.2(e)", and "§ 620.2(f)" and adding in their places, the references, "Subpart B", "§ 620.5", "§ 620.2(b)", and "§ 620.2(c)" in the first, second, and third sentences of paragraph (d) introductory text, respectively; by removing the reference, "§ 620.3(c)" and adding in its place, the reference "§ 620.5(c)" in paragraph (d)(2); by removing the reference, "§ 620.3(l)" and adding in its place, the reference "§ 620.5(l)" in paragraph (d)(3); by removing the reference, "subpart B" and adding in its place, the reference "§ 620.2 and subpart C" in the first sentence of paragraph (e) introductory text; and by removing the reference, "§ 620.10(d)" and adding in its place, the reference "§ 620.2(b)" in the second sentence of paragraph (e) introductory text.

Subpart M—Liquidation of Banks

§ 611.1175 [Amended]

3. Section 611.1175 is amended by removing the references, "subpart A", "§ 620.3", "§ 620.2(e)", and "§ 620.2(f)" and adding in their places, the references, "subpart B", "§ 620.5", "§ 620.2(b)", and "§ 620.2(c)" in the first, second, and third sentences of paragraph (d) introductory text, respectively; by removing the reference, "§ 620.3(c)" and adding in its place, the reference "§ 620.5(c)" in paragraph (d)(2); by removing the reference, "§ 620.3(l)" and adding in its place, the reference "§ 620.5(l)" in paragraph (d)(3); by removing the reference, "subpart B" and adding in its place, the reference "§ 620.2 and subpart C" in the first sentence of paragraph (e) introductory text; and by removing the reference, "§ 620.10(d)" and adding in its place, the reference "§ 620.2(b)" in the second sentence of paragraph (e) introductory text.

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1182 [Amended]

4. Section 611.1182 is amended by removing the references, "§§ 620.2(e), 620.3(m)(3), 620.10(d), and 620.20 (e) and (f)" and adding in their place, the references "§§ 620.2(b), 620.2(c), and 620.5(m)(2)" in paragraph (d).

PART 620—DISCLOSURE TO SHAREHOLDERS

5. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11; 12 U.S.C. 2252, 2254, 2279aa–11; sec. 424 of Pub. L. 100–233.

Subparts B, C, D, and E [Redesignated as C, D, E and F]

6. Subparts B, C, D, and E are redesignated as new subparts C, D, E, and F.

7. Section 620.3 is redesignated as new § 620.5 in subpart B.

8–11. Subpart A is amended by revising the heading to read as follows:

Subpart A—General

12. Section 620.1 is amended by adding introductory text, removing existing paragraph (i); redesignating paragraphs (b), (c), (d), (e), (f), (g), (h), and (j) as new paragraphs (p), (e), (f), (g), (h), (j), (o), and (q); adding new paragraphs (b), (c), (d), (i), (k), (l), (m), (n), and (r); and revising newly redesignated paragraphs (g) and (j) to read as follows:

§ 620.1 Definitions.

For the purpose of this part, the following definitions shall apply:

* * * * *

(b) *Association* means any of the associations as described in § 619.9050.

(c) *Bank* means any of the Farm Credit banks as described in § 619.9140.

(d) *Direct lender association* means any association that is a direct lender as described in § 619.9135 of this chapter.

* * * * *

(g) *Loan* means any extension of credit or lease that is recorded as an asset of a reporting institution, whether made directly or purchased from another lender. The term "loan" includes, but is not limited to, loans originated through direct negotiations between the reporting institution and a borrower; purchased loans or interests in loans, including participation interests, retained subordinated participation interests in loans sold,

interests in pools of subordinated interested that are held in lieu of retaining subordinated participation interest in loans sold; contracts of sale; and notes receivable.

* * * * *

(i) *Net worth* means total assets minus total liabilities.

(j) *Normal risk of collectibility* means the ordinary risk inherent in the lending operation. Loans that are deemed to have more than a normal risk of collectibility include, but are not limited to, any loans properly identifiable as "nonperforming" as defined in § 621.2(a)(17) of this chapter.

(k) *Permanent capital* shall have the same meaning as in § 615.5201(h) of this chapter.

(l) *Protected borrower stock* means eligible borrower stock as defined in § 615.5260(h) of this chapter.

(m) *Related association* means an association within the reporting bank's chartered territory that generates loans for the bank or whose operations the bank funds.

(n) *Related bank* means a reporting association's funding bank or the bank for which it generates loans.

* * * * *

(r) *Significant event* means any event that is likely to have a material impact on the reporting institution's financial condition, results of operations, cost of funds, or reliability of sources of funds. The term "significant event" includes, but is not limited to, actual or probable noncompliance with the regulatory minimum permanent capital standards or capital adequacy requirements, stock impairment, the imposition of or entering into enforcement actions, execution of financial assistance agreements with other institutions, collateral deficiencies that impact a bank's ability to obtain loan funds, or defaults on debt obligations.

13. Section 620.2 is amended by revising the heading; adding introductory text; redesignating paragraphs (a), (b), and (c) as new § 620.4, paragraphs (a), (b), and (c) in subpart B; removing paragraph (j); redesignating paragraphs (d), (e), (f), (g), (h), (i), and (k) as new paragraphs (a), (b), (c), (d), (e), (f), and (g); adding new paragraphs (h) and (i); removing the reference "paragraph (e)" and adding in its place "paragraph (b)" in newly redesignated paragraph (c); removing the words "this subpart" and adding in their place "subparts B and D" in newly redesignated paragraph (f); and revising newly redesignated paragraphs (a), (b)(3) attestation text, and (g) to read as follows:

§ 620.2 Preparing and filing the reports.

For the purposes of this part, the following shall apply:

(a) Three complete copies of each report or information statement required by this part (for the purpose of this section, referred to as "report" unless otherwise specified), including financial statements and related schedules, exhibits, and all other papers and documents that are part of the report shall be filed with the Chief Examiner, Farm Credit Administration, McLean, Virginia 22102–5090, or with such other Farm Credit Administration offices as the Chief Examiner designates. The report shall be received by the Farm Credit Administration within the period prescribed under applicable sections of individual subparts regarding preparation and distribution of the report. The annual and quarterly reports shall be available for public inspection at the issuing institution and the Farm Credit Administration office with which the reports are filed. Bank reports shall also be available for public inspection at each related association office.

(b) * * *

(3) * * *

The undersigned certify that this report has been prepared in accordance with all applicable statutory and regulatory requirements and that the information contained herein is true, accurate, and complete to the best of his or her knowledge and belief.

* * * * *

(g) Each annual and quarterly report of a bank shall present the financial statements of the bank and its related associations on a combined basis. The report shall also include, at a minimum, the statement of condition and statement of income for the bank only. These statements may be in summary form and shall disclose the basis of presentation if different from the accounting policies of the combined bank and association statements.

(h) Each association shall include a statement in a prominent location within each annual and quarterly report that the shareholders' investment in the association is materially affected by the financial condition and results of operations of the related bank and that a copy of the bank quarterly report is available upon request free of charge.

(i) Each annual and quarterly report shall include addresses and telephone numbers where association shareholders may obtain copies of bank quarterly reports. Upon receiving such a request, each bank and each related association shall promptly mail or deliver to the requesting shareholder a copy of the requested report free of charge.

14. A new § 620.3 is added to Subpart A to read as follows:

§ 620.3 Prohibition against incomplete, inaccurate, or misleading disclosure.

No institution and no employees, officer, director, or nominee for director of the institution shall make any disclosure to shareholders or the general public concerning any matter required to be disclosed by this part that is incomplete, inaccurate, or misleading. When any such person makes disclosure that, in the judgement of the Farm Credit Administration, is incomplete, inaccurate, or misleading, whether or not such disclosure is made in disclosure statements required by this part, such institution or person shall make such additional or corrective disclosure as is necessary to provide shareholders and the general public with a full and fair disclosure.

15. New subpart B, consisting of newly redesignated §§ 620.4 and 620.5, is amended by revising the heading to read as follows:

Subpart B—Annual Report to Shareholders

16. Newly redesignated § 620.4 is amended by adding a new section heading; revising paragraph (b); and removing the reference to "§ 620.3" and adding in its place "§ 620.5" in paragraph (c) to read as follows:

§ 620.4 Preparing and distributing the annual report.

* * * * *

(b) Each bank shall distribute its annual report to the shareholders of related associations within the period required by paragraph (a) of this section. Each bank shall coordinate such distribution with its related associations.

* * * * *

17. Newly redesignated § 620.5 is amended by removing the words "mergers or consolidations" and adding in their place "changes in the reporting entity" in paragraph (a)(4); adding the words ", i.e., headquarters, and major facilities where the institution makes and services its loans," after the words "principal offices" in paragraph (b); revising paragraph (c) heading; redesignating existing paragraph (c) text as new pargraph (c)(1); adding new paragraph (c)(2); removing the words "in the institution's judgment" from paragraph (g)(2)(v); revising paragraphs (a)(3), (a)(9), (d), (e)(1), (e)(2), (f), (g) introductory text, (g)(1)(i), (g)(2)(ii), (g)(2)(iii), (g)(4)(ii), (j)(3)(i) and (m)(1); remaining paragraph (m)(2); redesignating existing paragraphs

(g)(1)(iii), (g)(2)(vi), (g)(4)(v), and (m)(3) as new paragraphs (g)(1)(iv), (g)(2)(vii), (g)(4)(vi), and (m)(2); adding paragraphs (e)(4), (g)(1)(iii), (g)(1)(iv)(E), (g)(2)(vi), (g)(3)(ii)(C), and (g)(4)(v); and revising redesignated paragraph (g)(1)(iv) heading, paragraph (g)(1)(iv)(D), and paragraph (g)(4)(vi) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(a) *Description of business.* * * *

(3) The types of lending activities engaged in, including any participation in the Federal Agricultural Mortgage Corporation programs or origination of loans for reseale, and financial services offered. Each bank shall also breiefly describe the lending and financial services offered by the associations that are its shareholders, as well as financial services offered to the borrowers in the bank's chartered territory by any service organization in which it has an ownership interest. Associations shall briefly describe the lending and financial services offered by the related bank or incoporate by reference relevant portions of the bank's report, if such report is distributed to association shareholders;

* * * * *

(9) A brief description of the business of any related Farm Credit institution, as described in § 619.9146 of this chapter, and the nature of the institution's relationship with such organization.

* * * * *

(c) *Legal proceedings and enforcement actions.* * * *

(2) Describe the existence and nature of enforcement actions, i.e., agreements, cease and desist orders, temporary cease and desist orders, suspensions or removals of officers or directors, or civil money penalties, if any, imposed or assessed on the institution or its officers or directors and the amount of any civil moeny penalties assessed.

(d) *Description of capital structure.* (1) Describe each class of stock and participation certificates the institution is authorized to issue and the rights, duties, and liabilities of each class. The description shall include:

(i) The number of shares of each class outstanding;

(ii) The par or face value;

(iii) The voting and dividend rights;

(iv) The order of priority upon impairment or liquidation;

(v) The institution's retirement policies and restrictions on transfer;

(vi) The statutory requirement that a borrower purchase stock as a condition to obtaining a loan;

(vii) The manner in which the stock is purchased (i.e., promissory note to the issuer, or cash not advanced by issuing institution);

(viii) The statutory authority of the institution to require additional capital contributions, if any; and

(ix) The statutory and regulatory restrictions regarding retirement of stock and distribution of earnings, and for banks for cooperatives, the amount required to be added to the unallocated surplus, pursuant to §§ 615.5215 and 615.5330 of this chapter.

(2) Describe regulatory minimum permanent capital standards, the institution's capital adequacy requirements, and the minimum stock purchase rquirements in effect.

(3) State whether the insititution is currently prohibited from retiring stock or distributing earnings by the statutory and regulatory restrictions described in paragraph (d)(1)(ix) of this section, or knows of any reason such prohibitions may apply during the fiscal year subsequent to the fiscal year just ended.

(e) *Description of liabilities.* (1) Describe separately the institution's insured and uninsured debt, indicating the type, amount, maturity, and interest rates of each category of obligations outstanding at the end of the fiscal year just ended. Describe the nature of the insurance provided under part E of title V of the Act. Describe any applicable statutory and regualtory restricitons on the institution's ability to incur debt.

(2) Describe fully the institution's rights and obligations under any agreement, formal or informal, between the institution and any other person or entity having to do with capital preservation, loss sharing, or any other form of financial assistance.

* * * * *

(4) Describe the statutory responsibility of Farm Credit System institutions for repayment of obligations issued by the Farm Credit System Financial Assistance Corporation.

(f) *Selected financial data.* Furnish in comparative columnar form for each of the last 5 fiscal years the following financial data:

(1) For banks and direct lender associations:

(i) Balance sheet

Total assets
- Investments
- Loans
- Allowance for losses
- Net loans
- Acquired property

Total liabilities
Obligations with maturities less than 1 year
Obligations with maturities longer than 1 year
Net worth
- Protected borrower stock
- Permanent capital
- Stock and participation certificates
- Surplus, less allocated equities
- Allocated equities

(ii) Statement of income

Net interest income
Provision for loan losses
Extraordinary items
Net income

(iii) Key financial ratios

Return on average assets
Return on average net worth
Net interest margin as a percentage of average earning assets
Permanent capital ratio
Net worth-to-asset
Net chargeoffs-to-average loans
Allowances for loan losses-to-loans

(iv) Net income distributed

Dividends
Patronage refunds
- Cash
- Stock
- Allocated equities

(2) For associations that are not direct lender associations:

(i) Balance sheet

Total assets
Accrued obligation under loss-sharing agreement, if any
Net worth
- Protected borrower stock
- Permanent capital

(ii) Statement of income

Compensation from related bank
Total operating expense
Extraordinary items
Provision for obligation under capital preservation or loss-sharing agreement, if any
Net income

(iii) Other

Loans serviced for related bank
Dividends paid
Patronage refunds paid
- Cash
- Stock
- Allocated equities

Permanent capital ratio
Payments under loss-sharing agreement

(g) *Management's discussion and analysis of financial condition and results of operations.* Fully discuss any material aspects of the institution's financial condition, changes in financial condition, and results of operations during the last 2 fiscal years, identifying favorable and unfavorable trends, and significant events or uncertainties. In addition to the items enumerated below, the discussion shall provide such other information as is necessary to an understanding of the institution's financial condition, changes in financial condition, and results of operations.

(1) *Loan portfolio.* (i) Describe the types of loans in the portfolio by major

category (e.g., agricultural real estate mortgage loans, rural home loans, agricultural production loans, processing and marketing loans, farm business loans, and international loans), indicating the approximate percentage of the total dollar portfolio represented by each major category. Associations that make agricultural production loans shall provide the information required for such loans by major subcategory (e.g., cash grains, field crops, livestock, dairy, poultry, and timber). For each category and subcategory, discuss any special features of the loans that may be material to the evaluation of risk and any economic or business conditions that have had or are likely to have a material impact on their collectibility. For banks, also disclose separately the aggregate amount of loans outstanding to related associations and other financial institutions.

* * * * *

(iii) Disclose the amount of purchased loans, loans sold with recourse, retained subordinated interests in loans sold, and interests in pools of subordinated interests that are held in lieu of retaining a subordinated participation interest in the loans sold.

(iv) *Risk exposure.* * * *

(D) For banks, a description in the aggregate of the recent loss experience of related associations that are its shareholders, including the items enumerated in paragraphs (g)(1)(iv) (A), (B), and (C) of this section.

(E) Describe any obligations with respect to loans sold and the amount of any contributions made in connection with loans sold into the secondary market pursuant to section 8.7 of the Act. Further disclose the amount of risk of loss associated with such obligations and the amount included in the allowance for losses to provide for such risk.

(2) *Results of operations.* * * *

(ii) Describe any unusual or infrequent events or transactions or any significant economic changes, including, but not limited to, financial assistance received or paid that materially affected reported income. In each case, indicate the extent to which income was so affected.

(iii) Discuss the factors underlying the material changes, if any, in the return on average assets, the return on average net worth, and the permanent capital ratio as determined in accordance with part 615, subpart H of this chapter. An explanation of the basis of the calculation of ratios relating to permanent capital and net worth shall be included.

* * * * *

(vi) For associations, discuss any events affecting a related organization that are likely to have a material impact on the associations' financial condition, results of operations, cost of funds, or reliability of sources of funds.

* * * * *

(3) *Liquidity and funding sources.*

* * *

(ii) *Liquidity.* * * *

(C) Discuss the institution's participation in the Federal Agricultural Mortgage Corporation secondary market programs authorized by title VIII of the Act and the origination of loans for resale under other authorities, if any.

* * * * *

(4) *Capital resources.* * * *

(ii) Describe any material trends or changes in the mix and cost of debt and capital resources. The discussion shall consider changes in protected borrower stock, permanent capital, debt, and any off-balanced-sheet financing arrangements.

* * * * *

(v) Discuss the adequacy of the current permanent capital position and any material changes in the capital plan adopted pursuant to § 615.5200 of this chapter, to the extent that such changes may have an effect on the institution's minimum stock purchase requirements and its ability to retire stock and distribute earnings.

(vi) Discuss any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect upon the institution's ability to meet the regulatory minimum permanent capital standards and capital adequacy requirements.

* * * * *

(j) *Transactions with senior officers and directors.* * * *

(3) *Loans to senior officers and directors.* (i) To the extent applicable, state that the institution (or in the case of an association that does not carry loans to its senior officers and directors on its books, its related bank) has had loans outstanding during the last full fiscal year-to-date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

* * * * *

(m) *Financial statements.*

(1) Furnish financial statements and related footnotes that have been prepared in accordance with generally accepted accounting principles and instructions and other requirements of the Farm Credit Administration and that have been audited in accordance with generally accepted auditing standards by a qualified public accountant, as defined in § 621.2(a)(21) of this chapter, and an opinion expressed thereon. The statements shall include the following statements and related footnotes for the last 3 fiscal years: balance sheet, statement of income, statement of changes in net worth, and statement of cash flows.

* * * * *

Subpart C—Quarterly Report to Shareholders

18. Section 620.10 is revised to read as follows:

§ 620.10 Preparing and distributing the quarterly report.

(a) Each institution that is a direct lender shall prepare and distribute to its shareholders a quarterly report within 45 days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution.

(b) Except as provided in paragraphs (e) and (f) of this section, each bank shall distribute its quarterly reports to shareholders of related associations within the period required by paragraph (a) of this section. Each bank shall coordinate such distribution with its related associations.

(c) The report shall contain, at a minimum, the information specified in § 620.11 and, in addition, such other material information as is necessary to make the required disclosures, in light of the circumstances under which they are made, not misleading.

(d) Distribution to shareholders may be by mail or by publication in newspapers or periodicals in the trade area of wide enough circulation to be reasonably assured that all of the institution's shareholders are reached on a timely basis.

(e) A bank is not required to distribute its quarterly reports to shareholders of related associations that are direct lender associations for those quarters in which no significant events have occurred or no significant events which occurred during the preceding quarters continue to materially affect the related associations. For each quarter in which no distribution is made, the bank shall certify to the Farm Credit Administration as follows:

> The undersigned certify that for the period between the end of the preceding fiscal quarter and the end of the most recent fiscal quarter, no significant events have occurred which are likely to have a material impact on related associations or no significant events which occurred during the preceding quarters continue to materially affect related associations.

The certification shall be signed by the persons required to sign the report filed pursuant to § 620.2(b).

(f) For each quarter in which distribution of bank quarterly reports to association shareholders is not made pursuant to paragraph (e) of this section, copies of bank quarterly reports shall be made available free of charge to shareholders of related associations promptly upon request by the shareholder to the issuing bank or to the association of which the requestor is a shareholder.

(g) Each direct lender association shall include a statement in the first annual and first quarterly reports issued after the effective date of this amendment explaining the regulatory changes in the distribution of bank quarterly reports and the new procedures under which association shareholders can obtain the bank quarterly reports.

19. Section 620.11 is amended by revising paragraph (a); adding (b) introductory text; removing paragraph (b)(3); redesignating existing paragraphs (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9) as new paragraphs (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8); removing the words ", in the opinion of management," from redesignated paragraph (b)(8); removing the reference "§ 620.3(g)" and adding in its place "§ 620.5(g)" in the introductory text of paragraph (c); revising paragraph (d)(3); and adding new paragraph (d)(4) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

(a) *General.* The information required to be included in the quarterly report may be presented in any format deemed suitable by the institution, except as otherwise required by this section. The report must be organized in an easily understandable format and not presented in a manner that is misleading.

(b) *Rules for condensation.* For purposes of this section, major captions to be provided in the financial statements are the same as those required in the financial statements contained in the institution's annual report to shareholders, except that the financial statements included in the quarterly report may be condensed into major captions in accordance with the rules prescribed under this paragraph and paragraph (f) of this section.

* * * * *

(d) *Financial statements.* * * *

(3) Interim statements of changes in net worth for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year.

(4) For banks, interim statements of cash flows for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year. For associations, interim statements of cash flows are optional.

* * * * *

Subpart D—Association Annual Meeting Information Statement

20. Section 620.20 is amended by removing the references "subpart A" and "subpart B" and adding in their place "subpart B" and "subpart C," respectively, in paragraph (c); removing paragraphs (d), (e), (f), (g), and (h); and revising the heading to read as follows:

§ 620.20 Preparing and distributing the information statement.

§ 620.21 [Amended]

21. Section 620.21 is amended by removing the references "§ 620.3(j)", "§ 620.3(k)", "§ 620.3 (j) and (k)", "§ 620.3 (j) and (k)" and adding in their place, the references "§ 620.5(j)", "§ 620.5(k)", "§ 620.5 (j) and (k)", and "§ 620.5 (j) and (k)" in paragraph (c)(4), respectively; and by removing the reference "§ 620.3 (j) and (k)" and adding in its place, the reference "§ 620.5 (j) and (k)" in the first and second sentences of paragraph (d)(5).

§ 620.22 [Removed]

22. Section 620.22 is removed.

Subpart E—Bank Director Disclosure Requirements

§ 620.32 [Removed]

23. Section 620.32 is removed.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

24. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11; 12 U.S.C. 2252, 2279aa–11.

Subpart A—Accounting Requirements

25. Section 621.2 is amended by removing the second sentence from the introductory text of paragraph (a)(8).

Dated: January 16, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–1422 Filed 1–23–91; 8:45 am]

BILLING CODE 3705–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA Board is proposing to revise § 701.21(h) (Member Business Loans) of its Rules and Regulations. The proposal results from NCUA's policy to periodically review each of its regulations. This proposal will clarify certain portions of the existing regulations and amend or add other provisions.

DATES: Comments must be received on or before March 25, 1991.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, David Marquis, Deputy Director or Timothy P. Hornbrook, Director, Department of Supervision, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 682–9640.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA Board adopted final rules regulating member business loans effective July 1, 1987. NCUA began collecting data on member business loans with the Call Report for June 1986. At that time, federally insured credit unions held less than $800 million in commercial loans. In 4 Year's time, that amount has grown by about 78 percent to approximately $1.4 billion in commercial loans (see exhibit A). This represents .7 percent of the total assets of all credit unions. About 7 percent of federally insured credit unions (895) are currently engaged in some form of business lending to their members.

Although business loans account for less than 1 percent of total assets in aggregate, this percentage is much higher for those credit unions actively engaged in granting such loans. See Exhibit B for a distribuiton of credit unions granting member business loans by CAMEL rating. As indicated in exhibit C, credit unions granting member business loans have, on average, 3.7 percent of assets committed to member business loans. This is over five times the national average of member buisness loans granted by federally

insured credit unions, as a result, credit union exposure is significant among those credit unions involved in this activity.

Member business lending has exposed both credit unions and the National Credit Union Share Insurance Fund (NCUSIF) to significant losses over the past 4 years. In a cursory review of the five largest failures in each region during fiscal year 1990, commercial lending was a factor in 16 of the 30 cases. These 16 cases caused losses in excess of $100 million. When combined with ineffective management and other contributing factors, commercial lending can and does result in significant losses. Clearly, the volume of losses attributable to member business loans is extraordinarily high in proportion to the total of all credit union lending.

The adequacy of reserves appears to be a signficant factor to successful operations. Among well-operated credit unions offering member business loans, less than 6 percent had commercial loans in excess of reserves (less Allowance for Loan Losses). On the other hand, more than 25 percent of less well-operated credit unions had members business loans in excess of reserves. Exhibit D illustrates this relationship.

Member business lending requires unique skills in underwriting and administration which are different from those typically required to originate consumer loans. Success in commercial lending requires that lenders retain experts with commercial lending expertise. In view of the staffing and administrative expense involved, few lenders are capable of servicing all types of commercial loans, in addition to consumer loans. For the most part, credit unions offering commercial loans do so on an extremely limited basis. Few credit unions are able to establish commercial loan departments due to an insufficient volume of loans to support the related expenses. As a result of inadequate staffing and inexperience, poor underwriting and servicing have led to unusually high losses in this area.

In view of the small number of credit unions offering member business loans and the relatively high risk involved, it is not reasonable to expect all federally insured credit unions to indirectly share this risk through exposure to losses to the NCUSIF. Accordingly, the NCUA Board is proposing to impose additional requirements on credit unions involved with business lending. These additional requirements are determined to be necessary in order to assure that credit unions which grant member business loans apply safe and sound lending practices appropriate to this type of activity. Althouth these requirements do not prohibit commercial loans, they do seek to clarify certain areas of the existing regulation and strengthen other provisions. The NCUA Board believes that credit unions were formed primarily as consumer lenders and that member business loans be made available to finance the incidental needs of members—not to engage in wholesale, high-risk commercial lending.

B. Section by Section Analysis

Section 701.21(h)(1)(i)

This section has been modified to include within the definition of "member business loan" any loan, line of credit or letter of credit where the source of repayment is derived, in whole or in part, from income produced by a commercial, corporate, business or agricultural enterprise.

This modification recognizes those circumstances where business related income is the source of repayment for personal or consumer purposes. The existing regulation does not cover this circumstance. Since much of the risk involved with member business loans is related to the source of repayment, as well as the purpose of the loan, the proposed change will require the additional analysis necessary to properly evaluate these credits. Where business related income is relied upon as a source of repayment, the viability and soundness of the underlying business enterprise is a critical factor in determining whether or not to lend. This modification also emphasizes this Agency's view that member business loans be based on the creditworthiness of borrowers and not the value of collateral.

Section 701.21(h)(1)(i)(A)

The existing section has been deleted from the proposed regulation. This change was made to remove the exception from the general definition for loans secured by a 1 to 4 family dwelling. The existing rule excluded from the definition of "member business loan", all loans secured by a 1 to 4 family dwelling which was the principal residence, secondary residence or one other residence of the member. The NCUA Board proposes to remove these exclusions from the definition. Loans for business purposes or financed by the proceeds of a business enterprise are fundamentally different products from consumer loans. The risks and assumptions required to analyze member business loans generally exist without regard to the type of collateral. As a result, the NCUA Board believes that these loans should be subject to the special underwriting and other requirements of this section.

Section 701.21(h)(1)(i)(B)

This section has been redesignated as § 701.21(h)(1)(i)(A). No other changes to this section.

Section § 701.21(h)(1)(i)(C)

This section has been redesignated as § 701.21(h)(1)(i)(B). In addition, this section was modified to reduce from $25,000 to $10,000 the minimum aggregate loan amount which may be excluded from the definition of a member business loan.

The NCUA Board proposes to lower the limit to $10,000 to recognize the inherent risks of member business loans and to require the additional analysis required by this section to a larger population of loans. Experience has shown that member business loans present similar types of risk without regard to the amount of the loan. Notwithstanding the above, the NCUA Board believes that some reasonable limit is necessary in order to avoid undue delays in processing relatively small, incidental credits.

The NCUA Board continues to believe that credit unions should perform the appropriate analysis for all business loans, even if less than $10,000. While smaller business loans are not included within the definition of member business loan, this does not relieve the board of directors of the responsibility to perform the appropriate steps to underwrite, administer and secure these loans consistent with safe and sound lending policies.

Section 701.21(h)(1)(ii)

This section was amended to remove the Allowance for Loan Losses account from the definition of "reserves". This definition is used in determining the maximum amount of member business loans available to one member and in aggregate. The Allowance for Loan Losses account is established as an estimate of the potential losses in existing credit union loan portfolios. As specifically designated reserves, it is the view of the NCUA Board that it is inappropriate to allow any portion of this account to be used as a basis to grant additional, high-risk loans.

Section 701.21(h)(1)(iii)

The term "associated member" has been clarified slightly. This clarification includes changing the term "common ownership" to "shared ownership" since the word "common" may connote a legal distinction unintended in the regulation. The term "with the

borrower" is added to clarify that the interest of the associated member is pertinent only as determined in context of the interest of the borrower-member.

Section 701.21(h)(2)

This section was clarified to state that other sections of the NCUA Rules and Regulations may also be applicable to member business loans in addition to this section. No change to existing policy is intended.

Section 701.21(h)(2)(i)(C)

This section clarifies a reference to other sections of this regulation. This is a technical clarification in order to accurately cross-reference other proposed changes to this general § 701.21(h).

Section 701.21(h)(2)(i)(E)

This section clarifies a reference to another section of this regulation. This is a technical clarification in order to accurately cross-reference other proposed changes to this general § 701.21(h).

Section 701.21(h)(2)(i)(H)

This section was amended to clarify the documentation requirements for member business loans. This proposal clarifies that the board of directors is responsible for determining the documentation required to support each request for a member business loan. This proposal limits the discretion of the board of directors to allow exceptions to the general documentation requirements to those circumstances where "such documentation requirements are not generally available". A review of member business loans granted by credit unions indicates that documentation is not always complete and that the board of directors have not enforced such requirements consistently. Analysis and documentation of member business loans is critical in evaluating creditworthiness of borrowers. Accordingly, the NCUA Board believes it is appropriate to obtain such documentation in all cases, provided such information is generally available.

The proposed rule eliminates the "trend and structure analysis" as this term is not generally understood and is redundant with other provisions. Finally, the term "ratio analysis of cash flows" is changed to "cash flow analysis" in order to be more consistent with generally understood terminology in this field.

Section 701.21(h)(2)(ii)

This section was added in order to require certain minimum policies with respect to loan-to-value (LTV) ratios, collateral interest, personal liability of principals and experience requirements for credit union personnel involved in making business loans.

The proposal would limit credit unions to financing no more than 80 percent of the value of the security. This change reflects the higher risk involved in granting such loans. Lenders which finance loans with high loan-to-value ratios take on most of the increased risk. Risk of failure to the member/borrower is minimal under such favorable financing terms and may actually encourage risk taking by borrowers. In view of the high failure rate of small business enterprises, the potential risk is significant. Accordingly, staff believes that requiring member/borrowers to retain a substantial equity interest in the property or business enterprise will impose additional descipline on borrowers and correspondingly reduce risk to credit unions.

The proposal would limit collateral used as security for member business loans to first security interests. Numerous losses at federally insured credit unions were caused by failing to secure a superior lien position to protect the credit union from loss. The potential impact on liquidity and risk of deterioration in collateral value by accepting secondary security interests is significant.

Staff also proposes to require the personal liability and guarantees of the principals on all member business loans. Use of corporate and other forms or business ownership has encouraged risk taking by small entrepreneurs. Such forms of ownership are often used as a means of avoiding personal liability on business losses. Requiring the personal liability and guarantees will impose additional responsibilities on member/borrowers at least commensurate with those taken by the lender. The NCUA Board believes that this requirement will discourage speculative and high risk ventures and their risk to credit unions.

Finally, this section proposes to require that personnel involved in underwriting and administering member business loans have, at a minimum, 2 years direct experience with the type of business, collateral and amount of credit. Member business loans require special expertise in virtually all phases of origination and administration. This includes, but is not limited to, underwriting, credit analysis, collections, documentation and file maintenance. Significant losses have occurred because boards of directors have failed to recognize and adjust to the special requirements of commerical lending. This inexperience and naivete has, in some cases, resulted in poorly structured and administered credits to marginal borrowers. Most of these problems could have been avoided had the credit union been better informed and prepared through use of qualified personnel.

Section 701.21(h)(2)(iii)(A)

This new section replaces the existing § 701.21(h)(2)(ii) and proposes to lower the maximum member business loan to any one borrower from 20 percent of reserves to 10 percent. Concentrations of credit to one borrower present a significant risk. A problem with a single borrower is the potential to jeopardize the safety and soundness of the credit union under the existing 20 percent limit. By lowering the maximum loan to one borrower, the proposal will reduce concentrations of credit and their attendant risks.

In addition, it is proposed that any security interest in primary and secondary residences be included in the calculation of the loans to one borrower limit. This provision, although included in the original proposed rule in 1987, was eliminated from the final rule. Interest in residences are often excluded from the bankruptcy estate under state laws. Accordingly, the rationale for excluding residences from the loan limit calculation is unclear. As collateral value, a residence may have little or no value under a foreclosure action on a member business loan. As a result, the NCUA Board proposes that interest in residences not be excluded from the calculation of the loans to one borrower limit.

Section 701.21(h)(4)(ii) of the existing regulation is restated within proposed § 701.21(h)(2)(iii)(A).

Section 701.21(h)(2)(iii)(B)

This section has been added to restict member business loans to no more than 100 percent of credit union reserves. In view of the extraordinary level of losses and potential exposure, the NCUA Board proposes that an aggregate limit for member business loans be established. Based on June 30, 1990 data, 144 of the 895 federally insured credit unions granting member business loans would be affected by this revision. Of those 144 credit unions affected, 112 are rated a CAMEL 3, 4 or 5 and, as a result, are of supervisory concern. In many cases, commercial loans are a major factor in the problems facing these credit unions. This aggregate limit is intended to be inclusive of loans granted for construction, development and speculative projects. Credit unions

needing a higher limit may apply as provided in § 701.21(h)(2)(iii)(C).

Section 701.21(h)(2)(iii)(C)

This revised section clarifies an existing portion of 701.21(h)(2)(ii) to indicate that credit unions seeking an exception to the regulatory limits on member business loans explain members' needs and the ability of the credit union to manage this activity. No change is intended as this reflects current policy and practice.

Section 701.21(h)(2)(iii)(D)

This new section has been added to limit member business loans to no more than 60 months in maturity. With few exceptions, business loans are generally short-term credits. Long-term lending in this area exposes lenders to additional, unanticipated risks which are largely unmeasurable. These risks are associated with national and local economic cycles, industry trends and similar factors. In view of the inability to accurately forecast or plan for such events, credit union activity in this area should be limited to a shorter, measurable time period. It is anticipated that the limit of 60 months in the proposed rule will accommodate most member business loans on the books of credit unions today.

Section 701.21(h)(2)(iv)

This section is the same as existing § 701.21(h)(2)(iii) and is merely renumbered.

Section 701.21(h)(3)

This new section was added to include additional requirements in the area of loans to finance construction, development and speculative real estate lending projects. A disproportionate amount of losses incurred by credit unions in member business loans have been in the area of construction, development and speculative real estate lending. This type of commercial lending is considered to be the riskiest segment of this market. This type of lending is predicated on the premise that the proposed venture will be completed on schedule, within cost estimates and will be successful as a business enterprise. None of these factors are assured. The risk of failure is one borne by the lender.

The proposed rule imposes additional restrictions on this type of lending activity in an effort to reduce the potential risk to an acceptable limit. The proposal limits the aggregate of such loans to 15 percent of reserves. This lower limit will reduce the overall exposure to the credit union. This limit is included within the proposed aggregate limit for all member business loans of 100 percent of reserves as provided in § 701.21(h)(2)(iii)(B).

In addition, the proposed rule requires borrowers to retain at least a 35 percent equity interest in the project. This provision will help insure that borrowers, as well as lenders, retain a vested interest in the success of each project.

Finally, the proposed rule imposes project management requirements to insure that funds are disbursed according to a preapproved draw schedule following on-site inspections by independent, qualified personnel. NCUA's review of past problems in this area indicates that many losses occur due to inadequate management of the project following loan approval. In some cases, draw schedules were never developed or approved, and funds were disbursed at the request of borrowers without on-site inspections. The proposed rule requires a preapproved draw schedule specific enough to determine the timing of disbursements in accordance with the completion of various stages of development. In addition, credit unions will be required to obtain the services of qualified personnel to perform on-site inspections. Such personnel should be independent of the lending, underwriting and approval process, but need not be outside consultants.

Section 701.21(h)(4)

This proposed section has been renumbered from the existing § 701.21(h)(3).

Section 701.21(h)(4)(i)

This proposed section has been clarified to eliminate any confusion in meaning. No change is intended from the existing provision.

Section 701.21(h)(4)(ii)

This section was renumbered and clarified to explain that the term "equity kickers" refers to business arrangements also known as "joint ventures". In addition, the word sales is added to note, under such arrangements, income is sometimes tied to the ultimate sale of the project, as well as business profit. No change in meaning is intended.

Section 701.21(h)(5)

This section was added to clarify that credit unions engaged in making member business loans must separately identify such loans in the records of the credit union and report as such on the financial and statistical reports required by the National Credit Union Administration. Credit unions are already required to separately itemize member business loans on the semiannual call reports (financial and statistical reports). The proposed rule expands the scope of recordkeeping and reporting requirements to include all member business loans without regard to the amount, security or whether the credit is fully insured or guaranteed by, or under a purchase commitment by any government agency or political subdivision. This section was added to provide accurate data to monitor the activity and potential impact of member business loans on credit unions and the NCUSIF.

Section 701.21(h)(6)

This section replaces existing § 701.21(h)(4) and was modified to remove obsolete references to the effective date of this section and to establish a new effective date for the new provisions established in this proposed rule change. Federally insured credit unions may meet this requirement by either: (1) Fully meeting the requirements of § 701.21(h), or (2) providing a plan, subject to the approval of the respective regional director, establishing a proposed time table for fully meeting the requirements of § 701.21(h).

Part 741 Requirements for Insurance, Section 741.3 Minimum Loan Policy Requirements—Although no change is proposed to this section, state regulatory authorities and federally insured state-chartered credit unions are advised that exemptions previously obtained by states under the existing regulations are no longer valid to the extent that existing state regulations are not substantially equivalent to the final regulations adopted by the NCUA Board. Such states must reapply for exemption as provided in this section.

C. Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because the rule only applies to the federally insured credit unions which make member business loans. Less than 35 federally insured credit unions and assets of less than $2 million grant member business loans. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule makes no substantive changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope." The issue of member business loans and their risks to federally insured credit unions and concerns of national scope. In order to enable NCUA and the NCUSIF to have an operable mechanism in place to ensure the safety and soundness of federally insured credit unions, this regulation is proposed. This regulation will apply to all federally insured credit unions. The NCUA Board believes that the protection of the National Credit Union Share Insurance Fund warrants these new restrictions and that the increased restrictions in the proposed amendments will not unduly burden federally insured state-chartered credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that this rule may have an occasional direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed amendments may supersede provisions of state law or regulation concerning member business loans which do not substantially meet the requirements of § 701.21(h).

List of Subjects in 12 CFR Part 701

Credit unions, Member business loans, Written loan policies, Conflicts of interest.

By the National Credit Union Administration Board on January 17, 1991.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNION

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. In § 701.21, paragraph (h) is revised to read as follows:

§ 701.21 Loans to Members and Lines of Credit to Members.

* * * * *

Definitions. (i) Member business loan means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, or agricultural purpose, or, where the source of repayment is derived in whole or in part from income produced by a commercial, corporate, business or agricultural enterprise (other than ordinary salary or employment income) except that the following shall not be considered member business loans for the purposes of this section:

(A) A loan that is fully secured by shares in the credit union or deposits in other financial institutions.

(B) A loan meeting the general definition of "member business loan" under paragraph (h)(1)(i) of this section, and made to a borrower or an associated member (as defined in paragraph (h)(1)(iii) of this section), which, when added to other such loans to the borrower or associated member, is less than $10,000.

(C) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the Federal Government or of a state or any of its political subdivisions.

(ii) *Reserves* means all reserves, including any undivided earnings or surplus but excluding the Allowance for Loss Losses account.

(iii) *Associated member* means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.

(iv) *Immediate family member* means a spouse or other family member living in the same household.

(2) *Requirements.* Member business loans, as defined in § 701.21(h)(1)(i), may be made by federal credit unions only in accordance with the applicable provisions of § 701.21 (a) through (g), to the extent that they are not inconsistent with this section.

(i) *Written Loan Policies.* The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

(A) Type of business loans that will be made;

(B) The credit union's trade area for business loans;

(C) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans, subject to the limitations of § 701.21(h)(2)(iii) (B) and (C);

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan;

(E) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to § 701.21(h)(2)(iii)(A);

(F) Qualifications and experience of personnel involved in making and administering business loans.

(G) Analysis of the ability of the borrower to repay the loan;

(H) Documentation supporting each requst for an extension of credit or an increase in an existing loan or line of credit shall (except where the board of directors finds that such documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies) include the following: balance sheet, cash flow analysis, income and expenses, tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns.

(I) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated.

(J) Appropriate interest rates and maturities of business loans.

(K) Loan monitoring, servicing and follow-up procedures, including collection procedures.

(L) Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans.

(M) Identification, by position, of those senior management employees prohibited by paragraph (h)(3) of this section from receiving member business loans.

(ii) *Other Policies.* The following minimum limits and policies shall also be established in writing and reviewed at least annually for loans granted under this section:

(A) Loan-to-Value (LTV) ratios which shall not exceed 80 percent;

(B) Collateral accepted as security for loans shall always represent a first security interest;

(C) Loans shall not be granted without the personal liability and guarantees of the principals (natural person members);

(D) Personnel involved in underwriting and administering business loans shall have at least 2 years of direct experience with the type

of business, collateral and amount of credit being considered;

(iii) *Loan limits*—(A) *Loans to one borrower.* Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 10% of the credit union's reserves. If any portion of a member business loan is fully secured by shares in the credit union, or deposits in another financial institution, or insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal Government, or of a state, or any of its political subdivisions, such portion shall not be calculated in determining the 10% limit. On or before the effective date, the federal credit union must notify the NCUA Regional Director, in writing, of any outstanding member business loans made prior to that date which exceed the 10% limit. Federal credit unions are prohibited from making any further advances beyond the 10% limit to borrowers whose aggregate business loans exceed the limit unless an exception has been approved by the regional director in accordance with § 701.21(h)(2)(iii)(C).

(B) *Aggregate loan limit.* Business loans as defined in this section, including any construction, development and speculative loans granted as provided under § 701.21(h)(3), shall not exceed 100% of a credit union's reserves. On or before the effective date, the federal credit union must notify the NCUA Regional Director, in writing, of any outstanding member business loans made prior to that date which exceed the 100% limit. Federal credit unions are prohibited from making any further advances beyond the 100% limit unless an exception has been approved by the regional director in accordance with § 701.21(h)(2)(iii)(C).

(C) *Exceptions.* Credit unions seeking an exception from the limits of § 701.21(h)(2)(iii) (A) or (B) must present the Board with, at a minimum: the higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy.

(D) *Maturity.* Member business loans shall not exceed 6 months in maturity.

(iv) *Allowance for loan losses.* (A) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondeliquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(B) Loans classified shall be reserved as follows:

(*1*) Loss loans at 100% of outstanding amount;

(*2*) Doubtful loans at 50% outstanding amounts; and

(*3*) Substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

(3) *Construction, development and speculative real estate lending.* Loans granted under this section to finance the construction or development of a commercial or residential building(s) shall be subject to the following additional provisions:

(i) The aggregate of all such loans shall not exceed 15 percent of reserves;

(ii) The borrower shall have a minimum of 35 percent equity interest in the project being financed;

(iii) Funds for such projects shall be released following-on-site inspections by independent, qualified personnel in accordance with a preapproved draw schedule.

(4) *Prohibitions*— (i) *Senior management employees.* A federal credit union may not make member business loans to the following:

(A) Any member of the Board of Directors who is compensated as such.

(B) The credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager).

(C) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager).

(D) The chief financial officer (Comptroller).

(E) Any associated member or immediate family member of paragraph (h)(4)(i) of (A)–(D) of this section.

(ii) *Equity kickers/joint ventures.* A federal credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit unon in conjunction with such loan is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(5) *Recordkeeping.* All loans, lines of credit, letters of credit, the proceeds of which will be used for commercial, corporate, business, or agricultural purpose, or, where the source of repayment is derived in whole or in part from income produced by a commercial, corporate, business or agricultural enterprise (other than ordinary salary or employment income) shall be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the National Credit Union Administration.

(6) *Effective date.* Section 701.21(h) is effective [30 days after publication in the **Federal Register**]. All member business loans made on or after that date must be in full compliance with § 701.21(h).

[FR Doc. 91–1660 Filed 1–23–91; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 89P–0349/CP]

HGM Medical Laser Systems, Inc., Microsurgical Argon Laser for Rhinology and Laryngology; Panel Recommendations on Petition for Reclassification

AGENCY: Food and Drug Administration, HHS.

ACTION: Petition for reclassification.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation for the Ear, Nose, and Throat Devices Panel (the Panel) that FDA reclassify the microsurgical argon laser for use in rhinology and laryngology from class III (premarket approval) to class II (performance standards). The Panel made this recommendation after review of the reclassification petition submitted by HGM Medical Laser Systems, Inc. (HGM), Salt Lake City, UT 84104–499. FDA is also issuing for public comment its tentative findings on the Panel's recommendations, and its tentative findings on the Panel's recommendations, and its intent to change the generic designation of the device, from microsurgical argon laser to argon laser for otology, rhinology, and laryngology. After considering any public comments on the Panel's recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the petition will be announced in the **Federal Register**.

DATES: Comments by March 25, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Louis Hlavinka, Center for Devices and Radiological Health, (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20852, 301–427–1230.

SUPPLEMENTARY INFORMATION: On May 5, 1989, HGM submitted a reclassification petition to FDA under section 513(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e)). The petition requested that FDA reclassify the firm's Models 5, 8, and 20 argon laser surgical device systems from class III into class II for surgical use in rhinology (nose) and laryngology (larynx/throat). On August 8, 1989, HGM amended its petition, requesting reclassification under section 513(f) of the act (21 U.S.C. 360c(f)), instead of section 513(e) of the act, and proposed changes in the labeling of its devices. The firm's petition, as amended, was filed at FDA on August 18, 1989.

HGM's devices are the generic-type microsurgical argon laser that are presently identified and classified by FDA at 21 CFR 874.4490. A microsurgical argon laser device for use in rhinology and laryngology is automatically classified into class III under sections 513(f)(1) of the act since devices of this generic type were not in commercial distribution before May 28, 1976, the enactment date of the Medical Device Amendments of 1976 (Pub. L. 94–295), and are not substantially equivalent either to a device that was in commercial distribution before that date, or to a device that was placed in commercial distribution for the first time on or after that date and that has subsequently been classified into class II or class I.

Section 513(f)(2) of the act provides that a manufacturer or importer of a device classified into class III under section 513(f)(1) of the act may file a petition for reclassification of the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. For purposes of reclassification of the microsurgical argon laser for use in rhinology and laryngology, it is necessary to show that the proposed new class has sufficient controls to provide reasonable assurance of the safety and effectiveness of the device.

Consistent with the act and the regulations, the agency referred HGM's reclassification petition to the Panel. On November 14, 1989, during an open public meeting, the Panel recommended that FDA reclassify the microsurgical argon laser from class III into class II for use in rhinology and laryngology. FDA tentatively agrees with the Panel's recommendations and, because of macrosurgical and otologic (ear) applications, is considering changing the generic designation of the device from microsurgical argon laser to argon laser for use in otology, rhinology, and laryngology.

I. Background

In 1979–80, two firms submitted premarket notifications to FDA under section 510(k) of the act (21 U.S.C. 360(k)), advising the agency of their intentions to commercially market argon laser devices with attachments for use in ear, nose, and throat (ENT) surgery. One firm's device was to be used in otolaryngology (ear/larynx/throat), the other firm's device in otology.

FDA determined that neither argon laser device with surgical attachments was substantially equivalent to any preamendments device, nor was either device substantially equivalent to any postamendments device that had been classified into class I or class II for surgical ENT use. Accordingly, both argon laser devices were automatically classified into class III under section 513(f)(1) of the act, and neither device could be placed in commercial distribution for ENT use unless it was reclassified under section 513(f)(2) of the act, or subject to an approved premarket approval application under section 515 of the act. See 47 FR 20188 at 20189 (May 11, 1982).

Subsequently, both firms petitioned FDA to reclassify their argon laser devices with surgical attachments from class III into class II for use in otolaryngology (Docket No. 81P–0015) and otology (Docket No. 80P–0501). As provided in section 513(f)(2) of the act and procedures in 21 CFR 860.134, FDA referred both petitions to the Panel. See 49 FR 17446 (April 24, 1984).

The Panel concluded during open panel meetings on April 27 and 28, 1981, that both argon laser devices with surgical attachments represented a generic type of ENT device, and identified the devices as microsurgical argon lasers. The Panel recommended that this generic type of device be reclassified from class III into class II for use in otolaryngology and that labeling fully describe surgical techniques, risks, and methods for avoiding hazards. See 47 FR 20188 at 20191 (May 11, 1982).

FDA agreed with the Panel's reclassification recommendation for the type of device known as the microsurgical argon laser. However, the agency did not believe there was sufficient valid scientific information to support a reclassification of the generic type of device for other surgical ENT uses, including use in laryngology and general use in otolaryngology. Upon publishing a notice of the Panel's recommendation and FDA's tentative position in the **Federal Register** of May 11, 1982 (47 FR 20188), and after a 60-day comment period, FDA issued orders in the form of letters sent to the petitioners on November 19, 1982, reclassifying the generic microsurgical argon laser and devices of this generic type from class III into class II for use in otology.

In the **Federal Register** of November 6, 1986 (51 FR 40378 at 40380), FDA published a final classification rule codifying the class II classification of the microsurgical argon laser for use in otology. The rule also codified the class III classification of this generic type of device under section 513(f)(1) of the act, for all other surgical ENT uses, including use in laryngology and general use in otolaryngology.

II. Device Description

The argon laser device for otology, rhinology, and laryngology is an electro-optical device which produces coherent, electromagnetic radiation with principal wavelength peaks of 488 and 514 nanometers. The device is used in the clinical field of otology for the purpose of coagulating and vaporizing various tissues, including osseous tissue. In rhinology and laryngology, the device is used for the purpose of coagulating certain tissues, including soft and fibrous tissues, but not including osseous tissue.

III. Panel Recommendations

The Panel met on November 14, 1989, in an open public meeting to discuss the use of the generic type of argon surgical laser for rhinologic and laryngologic applications. The Panel recommended that FDA reclassify the argon laser for use in rhinology and laryngology from class III into class II for the purpose of coagulating and vaporizing soft and fibrous, but not osseous, tissues. The Panel recommended that FDA assign a low priority for the development of a performance standard for such uses of the argon laser device. The Panel also recommended that specific labeling for the device include a warning to use a laser plume evacuator when performing laser surgery.

IV. Summary of the Reasons for the Recommendation

The Panel considered devices described in the petition as representative of the generic type of argon laser device that is intended to be used in rhinology and laryngology and

that is currently identified and classified by FDA at 21 CFR 874.4490 as the microsurgical argon laser. The Panel based its recommendations upon review of the information and data contained in the reclassification petition, information provided by FDA, open committee discussion during the meeting held on November 14, 1989, FDA's summary and analysis of the data, and the Panel members' own personal knowledge of and clinical experience with the device.

The Panel gave the following summary of reasons in support of its recommendation to reclassify the argon laser for rhinology and laryngology from class III to class II.

1. General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

2. There is sufficient publicly available information to demonstrate that risks to health and the performance parameters of the device have been characterized and that the relationship of these risks and the performance parameters have been weighed.

Weighing the benefits derived from use of this device (hemostasis, reduced time for surgical procedures, easier access to anatomical areas, and converting the status of certain treatments from inpatient to outpatient) against the risks presented by use of the device (spread of infectious pathogens in the laser plume, irritation of the nasal airway and eyes due to the laser plume, ocular and skin injury to both patient and surgical personnel, and operating room fires, involving apparel or the nasal airway and upper aerodigestive tract), the Panel believes that the benefits to be obtained outweigh the risks presented. For these reasons, the Panel recommended that the device be reclassified from class III to class II.

3. There is sufficient information available to establish a performance standard to reasonably assure device safety and effectiveness and a performance standard is necessary to control the design and electro-optical characteristics of the device, such as wavelength and duration of laser emissions and maximum energy output.

Despite the availability of sufficient information to establish a standard, the development of a standard is a low priority because the device presents only remote risks of injury or illness. The priority for developing a standard is also lessened by the fact that manufacturers currently conform to the American National Standard Institute (ANSI) voluntary standard for laser safety (ANSI Z136.3) (Ref. 4) and to the FDA mandatory, radiation safety performance standard for laser products (21 CFR 1040.10 and 1040.11) (Ref. 3).

Additionally, the general controls of the act, including the premarket notification process under section 510(k) of the act, and good manufacturing practice and labeling requirements, can assure the safe and effective use of the device.

V. Risk to Health

The Panel has determined that the foreseeable risks to health associated with the device are related to the production of the laser plume, i.e., the spread of infectious pathogens in the laser plume and irritation of the nasal airway or upper aerodigestive tract due to the laser plume. Other reasonably foreseeable risks to health include ocular injury, skin burns, and operating room fires. In the Panal's judgment, these risks have a low level of occurrence if proper surgical technique is utilized.

VI. Summary of Data Upon Which the Recommendation is Based

The Panel identified potential problems and performance aspects associated with the argon surgical laser that require control. Performance characteristics of the device, related to its makeup and operation, that require control include the following:

1. Design of electrical properties and grounding of electrical components to avoid hazardous leakage of current;

2. Mechanisms of control of the triggering of optical emissions to avoid unintended firing of the laser device and exposure of the patient and personnel to unintended irradiation;

3. Mechanisms and procedures of control of the alignment of the laser beam to avoid ineffective, unintended, or hazardous radiation exposures due to misalignment;

4. Software programming of computerized functions of the device, including procedures for the development, verification, and validation of software to avoid malfunctions and errors;

5. Laser emission, including its wavelength, pulse frequency, pulse train duration, and power; the laser beam, including the beam diameter, beam divergence, and beam spatial intensity profile; and the hand instrument delivery systems including the hand piece targeting system; and

6. Description of laser plume hazards to patients and operating room personnel, and delineation of laser plume evacuation methods.

Performance characteristics of the device related to its surgical use and safety that are in need of control include the following patient, clinical staff, and surgical instrumentation considerations:

7. Specification of accessories suitable for ocular protection of patient and staff (e.g., shutters and/or goggles);

8. Description of the surgical preparation of patients necessary needed to avoid unintended tissue burns (e.g., saline-saturated covering of exposed skin and anatomical structures proximate to surgical field);

9. Specification of surgical instrumentation to assure compatibility with the laser device, (e.g., endoscopes, hand instruments, etc.);

10. Description of special anesthetic considerations necessary to avoid operating room fires involving apparel or other materials, and the nasal airway or upper aerodigestive tract (e.g., flammable anesthetics, high oxygen concentration, tracheostomy tube, etc.); and

11. Incorporation of safety interlocks to avoid electrical shocks and radiation exposures caused by hazardous uncontrolled access to equipment.

The complexity and diversity of the argon laser medical device require a performance standard to assure that the device is safe and effective. The above-stated performance characteristics of the device and corresponding control considerations are general in nature. They were discussed by the Panel to determine the manner in which existing mandatory and voluntary performance standards for laser products can control specific characteristics of the device, including its operation and effects. The Panel also discussed the degree to which existing laser product standards assure that certain characteristics of the argon laser medical device can be adequately controlled if these standards are followed properly.

Laser products, including argon laser devices for medical use, are subject to FDA safety performance standards (21 CFR 1040.10 and 1040.11) (Ref. 3). The standards describe the method of measuring the maximum energy output of laser devices, the classification of laser devices according to wavelength and emission duration (i.e., class I, II, IIIa, IIIb, or IV), the labeling of laser devices (i.e., warning and caution labels), the incorporation of safety interlocks and key controls in laser device systems, and the viewing optics, manual reset controls, and location of controls of laser devices. The Panel believed that the radiation safety provisions of the Federal performance standards for laser products would adequately control the radiation exposure risks of the device.

ANSI standard Z136.1 (Ref. 4) is a voluntary standard that provides guidance on the operation and use of laser products. Guidance is provided regarding hazard evaluation, control measures, laser safety and training programs, medical surveillance, electrical hazards, and minimum permissible exposure levels for skin and eye. The Panel believed that this standard would further control many of the same device characteristics and applications covered by the mandatory FDA laser product performance standard and would provide additional control of the electrical properties, beam characteristics, and eye protection.

Appropriate software programming is addressed by FDA's existing software guidance document (Ref. 5). Copies of the document may be obtained from the Division of Small Manufacturers Assistance, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6597.

Alignment control, surgical preparation, compatible surgical instrumentation, and anesthetic considerations can be adequately controlled by proper labeling. The Panel believed that labeling proposed for the device and contained in the subject reclassification petition was satisfactory in this regard (Refs. 1 and 2). The Panel considered and viewed favorably the following labeling recommendations:

a. System specifications. A complete description of the medical argon laser device and associated equipment (e.g., hand pieces and air evacuation systems). This would also include the beam characteristics and how they may be varied.

b. Installation. The manner in which the argon laser device system should be installed. This would include necessary electrical outlets and coolants.

c. Operation. The manner in which the argon laser device may be operated, including varying the characteristics of the beam. Warning lights and sounds should be characterized. Special handling procedures for such components as fiber optics should be outlined.

d. Intended use. A list of specific indications for use and the recommended energy level for each indication.

e. Precautions. Should include that an argon laser medical device should not be used in coagulating or vaporizing osseous tissue.

f. Warnings. That a laser plume evacuation system must be used in surgical procedures.

g. Patient and clinical staff safety. Such precautions as proper eyewear, patient preparation, anesthesia, special hand instruments to be used with lasers, and laser plume evacuation systems.

h. User maintenance. Calibration and maintenance of the argon laser device and handpieces should be included. Testing and use of fiber optics should be included.

Appropriate and adequate laser plume evacuation has received much attention in the past few years (Refs. 7 through 12). With the discovery that viable pathogens can be carried by the laser plume (Ref. 8), concerns have arisen related to the transmission of viruses and pathogens to other anatomical parts of the patient, and to the clinical staff. In its discussions, the Panel recognized that these concerns appear to be equally relevant to devices such as electrocautery and rills (Ref. 7). The actual incidence of the spread of pathogens to patients and/or clinical staff has appeared to be extremely low (Ref. 11).

The Panel believes that patients and clinical staff should also be protected from inhaling the laser plume under all circumstances. The Panel recommended that the labeling for the device state that smoke evacuation systems must be used when using the argon laser medical device.

The final concern that the Panel discussed regarded the effect of the argon laser device's electromagnetic radiation upon the various types of tissue encountered in the clinical anatomical fields of rhinology and laryngology. The Panel considered the fact that the argon laser device for rhinology and laryngology has a wavelength peak at 488 and 514 nanometers. These wavelengths are absorbed by red pigmented tissues (e.g., hemoglobin, etc.). Because of this preferential absorption, laser emissions affect the coagulation of tissue by the heating of various targeted anatomical structures that contain hemoglobin. In addition, vaporization (i.e., cutting) can take place by heating the tissue to higher temperatures.

FDA's presentation to the Panel pointed out that any tissue can be affected by the emissions of the argon laser device unless the tissue structure consists of material that completely transmits or reflects the particular wavelengths of electromagnetic radiation emitted by the laser. Thus, the physiological properties of human tissue and the characteristics of the laser beam will have a direct affect on what tissues can be coagulated and/or vaporized without adversely affecting the surrounding tissue.

The Panel has a concern with the laser interaction with bone. Literature, labeling, and presentations before the Panel indicate that the wavelengths of electromagnetic radiation that the argon laser produce are not efficiently absorbed by osseous tissue. The water content of osseous tissue like bone is approximately 10 to 20 percent. Thus, to effectively vaporize or coagulate bone one must irradiate the tissue for long periods of time. This could result in a large amount of adjacent tissue damaged by heat buildup. Although the Panel was aware of the use of the argon laser in conjuction with handheld probes to perform the otologic procedure of stapedotomy, the Panel did not recommend use of the argon laser for coagulating or vaporizing osseous tissue of the nose and throat in the context of rhinology and laryngology.

In conjunction with tissue effect, the Panel reviewed literature that was submitted with the petition to determine whether date adequately support the indications for use referenced in the petition's proposed labeling. A number of articles submitted with the petition detailed the clinical history of the argon laser's use in the practice of rhinology and laryngology (Refs. 14 through 19). The data contained in these references adequately describe the conditions of use of the device referenced in the petition. The petition also contained data from a study sponsored by HGM to evaluate the safety and effectiveness of the argon laser device for performing tonsillectomies. The Panel discussed whether there was sufficient information in the study of support reclassification of the argon laser for tonsillectomy and the laser's purported benefits of reducing pain and morbidity and promoting healing.

In summary, the Panel believes, based on publicly available valid scientific evidence, that the argon laser device for use in rhinology and laryngology (currently classified at 21 CFR 874.4490 as the microsurgical argon laser) can be regulated as a class II device to reasonably assure the device's safety and effectiveness. Reasonable assurance of the device's safety and effectiveness is predicated on the device's conformance in design, operation, and use with the Federal radiation safety performance standards for laser products (21 CFR 1040.10 and 1040.11) and ANSI standard Z136.3. Moreover, such assurance is reinforced by the use of labeling, containing certain information, including precautions against using the device for treatment of osseous tissue, warnings to employ means of laser plume evacuation, and specific information concerning device specifications and indications for use.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. HGM Medical Laser Systems, Inc., Reclassification Petition, 89P-0349, 1989.

2. Summary Minutes: ENT Devices Panel Meeting, Washington, DC, November 13-14, 1989.

3. Performance Standards for Light-Emitting Products, Laser Products, 21 CFR 1040.10, 1988.

4. Laser Safety in the Health Care Environment, ANSI Z136.3, American National Standards Institute, New York, 1985.

5. Reviewer Guidance for Computer-Controlled Medical Devices, draft document, Center for Devices and Radiological Health, Office of Device Evaluation, August 1, 1988.

6. Apfelberg, David B. (ed.), "Evaluation and Installation of Surgical Laser Systems," Springer-Verlag, New York, 1987.

7. Felten, R. P., "Summary of Laser Plume Effects and Safety Session," Journal of Laser Applications, pp. 4-5, March 1989.

8. Ediger, M.N., and L.S. Matchette, "In Vitro Production of Viable Bacteriophage in a Laser Plume," Lasers in Surgery and Medicine, 9:296-299, 1989.

9. Smith, J.P. et al., "Evaluation of a Smoke Evaluator Used for Laser Surgery," Lasers in Surgery and Medicine, 9:276-281, 1989.

10. Ossterhuis, J.W. et al., "The Viability of Cells in the Waste Products of CO_2—Laser Evaporation of Cloudman Mouse Melanomas," Cancer, 49: 61-67, 1982.

11. Nezhat, Camran et al., "Smoke From Laser Surgery: Is There a Health Hazard?", Lasers in Surgery and Medicine, 7:376-382, 1987.

12. Garden, J.M. et al., "Papillomavirus in the Vapor of Carbon Dioxide Laser-Treated Verrucae," Journal of the American Medical Association, 259:1199-1202, 1988.

13. Freitag, L. et al., "Laser Smoke Effect on the Bronchial System," Lasers in Surgery and Medicine, 7:283-288, 1987.

14. Koebner, H.K. (ed.), "Lasers in Medicine," John Wiley and Sons, New York, vol. 1, pp. 63-73, 1980.

15. Lenz, H., "Eight Years of Experience of Laser Surgery of the Inferior Turbinate in Vasomotor Rhinitis Using a Laser Strip—Carbonization," HNO (Berlin), 33:422-425, 1985.

16. Lenz, H., "Endonasal Surgical Technique with the Argon Laser," Journal of Rhinology and Otology, 63:534-540, 1984.

17. Hobeika, C.P., and R.J. Rockwell, "Argon Laser Microsurgery: Its Advantages and Applications in Otolaryngology," Laryngoscope, pp. 960-965, 1973.

18. Brophy, J.W. et al., "Argon Laser Use in Papillomas of the Larynx," Laryngoscope, 92:1164-1167, 1982.

19. Dejonckere, P.H. et al., "Extensive Granuloma Pyogenicum as a Complication of Endolaryngeal Argon Laser Surgery," Lasers in Surgery and Medicine, 5:41-45, 1985.

VIII. FDA's Tentative Findings

FDA believes that the data provided by the petitioner and other persons constitute sufficient information to establish a performance standard to reasonably assure device safety and effectiveness. Valid scientific evidence exists to demonstrate that the controls of class II are sufficient, and in combination with class I general controls, can assure device safety and effectiveness. Class III premarket reviews appear unnecessary to regulate a device where generic controls like performance standards will suffice. FDA tentatively agrees with the recommendation of the Panel that the generic type of device, the argon laser device for use in rhinology and laryngology, be reclassified from class III into class II and that the promulgation of a performance standard for the device be low priority.

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Economic Impact

Generally, reclassification of devices from class III into class II should not have any adverse economic impact because manufacturers are relieved of the cost of complying with the premarket approval requirements in section 515 of the act. Although there may be offsetting costs that a manufacturer of the device could incur to comply with the provisions of a performance standard under section 514 of the act (21 U.S.C. 360d), the economic impact would be the result of actions taken to comply with the standard and not the act of reclassification, and would likely not exceed costs that may be associated with the device in its present regulatory classification. Nonetheless, the economic impact of the establishment and promulgation of a performance standard will be assessed prior to its actual proposal as part of the agency's regulatory planning process under Executive Order 12291.

After considering the economic consequences of reclassifying the device as discussed above, FDA concludes that this action, and any subsequent regulatory action would not be a major rule as specified in Executive Order 12291. Further, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96-354) that the proposed rule would not have a significant economic impact on a substantial number of sm ll entities.

XI. Comments

Interested persons may, on or before March 25, 1991, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 17, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-1598 Filed 1-23-91; 8:45 am]

BILLING CODE 4160-01-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 308

[CRT Docket No. 89-5-CRA]

Adjustment of the Syndicated Exclusivity Surcharge

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Tribunal has received a petition for rulemaking from Program Suppliers purporting to clarify the wording of the syndicated exclusivity surcharge rule adopted by the Tribunal in 1990. The Tribunal is asking the public to comment on Program Suppliers' proposed rulemaking. The rule change will make it clear that the 35-mile distance is intended to be measured from the "specified zone" of the commercial VHF station, as the FCC has used that term.

DATES: Comments are due on or before February 25, 1991. Reply comments are due on or before March 11, 1991.

ADDRESSES: An original and five copies of comments and reply comments shall be filed with: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009 (202-673-5400).

SUPPLEMENTARY INFORMATION: On August 16, 1990, the Tribunal issued its final rule adjusting the syndicated

exclusivity surcharge. 55 FR 33604. On November 21, 1990, the Tribunal revised the wording of the surcharge rule to make it clear that in measuring the 35-mile distance between the cable system and the broadcast station, it would be measured from the broadcast station, not the cable system. 55 FR 48601.

Program Suppliers, one of the parties to the proceeding in which the surcharge was adjusted, filed a petition for rulemaking with the Tribunal on December 28, 1990, asking that the rule be revised to clarify further how the 35-mile distance would be measured.

Program Suppliers have asked that § 308.2(d) be changed to read "* * * a cable system which is located more than 35 miles from *the specified zone of a* commercial VHF station." (words in italics denote proposed language to be added).

In support of their petition, Program Suppliers note that the Tribunal's surcharge rule is intended to work in conjunction with the FCC's rules, and § 76.5(e) of the FCC's rules measures but one 35-mile specified zone for each community based on a single reference point within the community, not a different 35-mile zone surrounding each station within a community. It is Program Suppliers' contention that the current surcharge rule could be read to create multiple 35-mile zones, yielding different surcharge liabilities than that intended by the Tribunal.

The Tribunal is proposing Program Suppliers' requested rule change to the public and solicits comments. A copy of Program Suppliers' petition is available upon request.

Dated: January 17, 1991.

Mario F. Aguero,

Chairman.

[FR Doc. 91-1612 Filed 1-23-91; 8:45 am]

BILLING CODE 1410-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50578; FRL-3713-7]

RIN 2070-AB27

Alkali Metal Nitrites; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) which would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of alkali (i.e. sodium or potassium) metal nitrites (AMNs) for use in metalworking fluids (as defined in § 721.3) containing amines (MWFAs). EPA believes that this action is necessary because AMNs, when used in amine-containing metalworking fluids, may be hazardous to human health due to high potential for nitrosamine formation, and activities associated with such use may result in significant human exposure. The required notice would provide EPA with the opportunity to evaluate the intended use and associated activities, and an opportunity to protect against potentially adverse exposure to the nitrosamines formed by reaction of AMNs with amines in metalworking fluids before it can occur.

DATES: Written comments must be submitted to EPA by March 25, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460. Comments regarding this proposed SNUR should include the docket control number OPTS-50578. Nonconfidential comments will be placed in the rulemaking record and will be available for public inspection. Unit IX. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: The proposed SNUR for AMNs would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of these substances for use in MWFAs. The required notice would provide EPA with the information needed to evaluate an intended use and associated activities, and an opportunity to protect against potentially adverse exposure to these chemical substances and their nitrosamine products before it can occur.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Summary of This Proposed Rule

The chemical substances which are the subjects of this proposed SNUR are the nitrites of the alkali metals (Group IA in the periodic classification of chemical elements) lithium, sodium, potassium, rubidium, cesium, and francium. EPA is proposing to designate the manufacture, import, or processing of these substances for use in MWFAs

as a significant new use. Thus, the rule would require persons who intend to manufacture, import, or process AMNs for use in MWFAs to submit a significant new use notice to EPA at least 90 days before such processing.

IV. Background Information on Alkali Metal Nitrites in Metalworking Fluids

A. Production and Use Data

In the fall of 1987, the International Lubricants Manufacturers Association asserted that the industry had completely abandoned use of nitrites. Information available to EPA from the Agency's contractor's telephone contacts with nitrite distributors and metalworking fluid formulators suggests that there is no current commercial use of AMNs in MWFAs. Major past and potential uses of MWFAs include lubrication of working surfaces in grinding, cutting, and shaping operations, to clear away filings or cuttings, and to control temperatures. EPA estimates that previously some 160,000 machinists, or 10 percent of all metalworking machinists, were exposed to AMNs in MWFAs. Exposure was both through skin contact and through inhalation.

B. Health Effects

Scientific evidence demonstrates that the combination of AMNs and MWFAs produces nitrosamines. The primary nitrosamine produced, *N*-nitrosodiethanolamine (NDELA), is formed when an inorganic nitrite reacts with diethanolamine and triethanolamine. EPA has classified NDELA as a "probable human carcinogen" (Group B2), and health concerns for the use of AMNs in MWFAs are based upon the formation of and exposure to this substance. A number of similar nitrosamines have been noted to have been formed by using nitrites in MWFAs, and they may in turn cause adverse health effects.

The extent of the formation of nitrosamines in MWFAs containing AMNs is influenced by a number of factors including: (1) Substances in the fluids that catalyze nitrosamine formation; (2) storage periods; and (3) heat generated during machining. EPA's health concerns regarding the use of these AMNs in MWFAs are based upon data indicating that one nitrosamine (NDELA) has induced cancer in 39 animal species including the mouse, hamster, dog, and monkey. NDELA has carcinogenic potential at relatively low dosage levels. In one study, NDELA was administered to male rats at five different daily dose levels: 1.5, 6, 25, 100, and 400 mg/kg body weight (R. Preussmann et al., Carcinogenicity of *N*-Nitrosodiethanol amine in Rats at Five Different Dose Levels, 42 Cancer Research 5167. December 1982). The doses were administered through the drinking water 5 days per week for the lifetime of the animals. Significant increases in liver tumors and in tumors of the nasal cavity were observed at all levels and were dose related. Based on the data available regarding NDELA, the Agency has concluded that the use of these AMNs in MWFAs may present a similar risk to human health.

V. Objectives and Rationale For the Proposed Rule

To determine what would constitute a significant new use of AMNs, EPA considered relevant information on the toxicity of the chemical substances and byproducts associated with the uses, likely exposures, and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this proposed rule:

1. EPA wants to ensure that it would receive notice of any company's intent to manufacture, import, or process AMNs for use in MWFAs before that activity begins.

2. EPA wants to ensure that it would have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins a significant new use of the chemical substances.

3. EPA wants to ensure that it would be able to regulate prospective manufacturers, importers, or processors of AMNs before a significant new use occurs, provided that the degree of potential health risk is sufficient to warrant such regulation.

Data indicate that NDELA may be a human carcinogen. As NDELA is a known byproduct of the use of amine-containing metalworking fluids that contain nitrites, EPA is concerned that exposure to the nitrosamines formed when AMNs are used in MWFAs may present a risk to human health. EPA believes that the use of these certain AMNs in MWFAs has a high potential to increase the magnitude and duration of exposure to NDELA from that which currently exists. Considering the toxicity/potential toxicity of NDELA, and for EPA to have the opportunity to evaluate an intended use of AMNs and potential exposures associated with such use before that activity begins, EPA is proposing the use of AMNs in MWFAs as a significant new use.

The use of AMNs in MWFAs is currently subject to no Federal regulation that would notify the Federal Government of activities that might result in adverse exposures to these substances or provide a regulatory mechanism that could protect human health or the environment from potentially adverse exposures before they occurred.

Given the toxicity and/or potential toxicity of NDELA, the reasonably anticipated situations that could result in exposure from the use of AMNs in MWFAs, and the lack of sufficient regulatory controls, individuals could be exposed to NDELA at levels which may result in adverse effects. For the foregoing reasons, EPA proposes to designate the use of AMNs in MWFAs as a significant new use as set forth in proposed § 721.1402.

VI. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions for AMNs.

1. One alternative would be to promulgate a section 8(a) reporting rule for AMNs. Under such a rule, EPA could require any person to report information to EPA when they intend to manufacture, import, or process AMNs for use in MWFAs. However, if EPA used section 8(a) rather than SNUR authority, the Agency would not be able to take immediate follow-up regulatory action under section 5(e) or 5(f) to prohibit or limit the activity. In addition, EPA may not receive important information from small businesses because such firms are exempt from section 8(a) reporting requirements. In view of the level of health concern for AMNs in MWFAs, EPA believes that a section 8(a) rule would not meet EPA's regulatory objectives.

2. Regulate under section 6 of TSCA. While EPA may regulate under section 6 if there is a reasonable basis to conclude that the processing, distribution in commerce, use, or disposal of a substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment, EPA has at this time made no final determination of risk. Since AMNs are not currently used in MWFAs, EPA believes a section 6 rulemaking is unnecessary and that a SNUR is adequate to allow EPA to address risks if use of AMNs in MWFAs resumes.

VII. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the effective date of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing (and therefore not "new") as of the effective date, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the purpose of the SNUR by initiating the proposed significant new use before the rule became final; this interpretation of section 5 would make it extremely difficult for EPA to establish SNUR notice requirements.

Persons who intend to begin commercial production or processing of AMNs for use in MWFAs between proposal and the effective date of the SNUR may comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial production or processing of AMNs for use in MWFAs between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Economic Analysis

EPA has evaluated the potential costs of establishing SNUR reporting requirements for AMNs. EPA's complete economic analysis is available in the public record for this proposed rule.

IX. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as CBI at the time of submission will be placed in the public file. A complete public version must be submitted if the submitter claims any material CBI. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50578). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received and will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA estimates that the reporting cost for submitting a significant new use notice would be approximately $4,500 to $11,800 including a $2,500 user fee. EPA believes that, because of the nature of the proposed rule and the substances involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by the rule would likely be small businesses. However, EPA expects to receive few SNUR notices for these chemical substances. Therefore, EPA believes that the number of small businesses affected by the proposed rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0038.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 14, 1991.

Victor J. Kimm

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would be revised to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625 (c).

2. By adding new § 721.1402 to subpart E to read as follows:

§ 721.1402 Alkali metal nitrites.

(a) *Chemical substances and significant new use subject to reporting.* (1) The category of chemical substances which are nitrites of the alkali metals (Group IA in the periodic classification of chemical elements) lithium, sodium, potassium, rubidium, cesium, and francium is subject to reporting under this section for the significant new use

described in paragraph (a)(2) of this section.

(2) The significant new use is: Use in metalworking fluids containing amines.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0038)

[FR Doc. 91–1655 Filed 1–23–91; 8:45 am]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 56, No. 16
Thursday, January 24, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Plant Variety Protection Advisory Board; Partially Closed Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Advisory Board.

DATES: Wednesday and Thursday, February 6 and 7, 1991, 8:30 a.m. to 4 p.m.

STATUS: Most of the meeting will be open to the public. Part of the meeting will be closed to the public.

ADDRESSES: The meeting will be held in the Bioscience Building (Bldg. 011A) Conference Room (room 119), Beltsville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth H. Evans, Executive Secretary, Plant Variety Protection Advisory Board, room 500, National Agricultural Library Building, Beltsville, Maryland 20705 (301)/344–2518).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice is given concerning a Plant Variety Protection Advisory Board meeting.

Matters to be Considered

Portion Open to the Public: The agenda for this portion of the meeting will consist of:

(1) Proposed regulations including fees.

(2) A draft of the revision of the International Convention for the Protection of New Varieties of Plants, which is being revised by the International Union for the Protection of New Varieties of Plants.

(3) The minimum difference accepted for novelty of varieties.

(4) Other related topics.

Portion Closed to the Public: This part of the meeting will involve consideration by the Board of the Commissioner's decision concerning an application for plant variety protection. The Board is to advise the Secretary whether to uphold the Commissioner's decision in whole or in part. A closed session is required for review of this application to maintain the confidentiality of the application and its contents as required in section 56 of the Plant Variety Protection Act (7 U.S.C. 2426), and is permitted pursuant to the authority in section 10(d) of the Federal Advisory Committee Act and section 552b(c)(3) of the Administrative Procedure Act (5 U.S.C. 552b).

Done at Washington, DC, on: January 18, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–1662 Filed 1–22–91; 9:51 am]

BILLING CODE 3410–02–M

Agricultural Stabilization and Conservation Service

National Marketing Quota for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Cigar-Binder (Types 42–44; 53–55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1991, national marketing quotas for fire-cured (types 21–23) and dark air-cured (types 35–36) tobacco for the 1991–92, 1992–93, and 1993–94 marketing years and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and cigar-binder (types 42–44; 53–55) kinds of tobacco for the 1991–92 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATES: Comments must be received on or before February 15, 1991, in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in room 3741-South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736, South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed

rulemaking with respect to the subject matter of this notice.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The Agricultural Adjustment Act of 1938, as amended (hereafter referred to as the "Act"), requires that, with respect to fire-cured (types 21–23) and dark air-cured (types 35–36) tobacco, the Secretary of Agriculture (Secretary) must proclaim by March 1, 1991, the respective national marketing quotas for the 1991–92, 1992–93, and 1993–94 marketing years. In addition, the Secretary is required to conduct, within 30 days after proclamation of such national marketing quotas, a referendum of farmers engaged in the 1990 production of these kinds of tobacco to determine whether they favor or oppose marketing quotas for such years. For fire-cured (types 21–23) and dark air-cured (types 35–36) tobacco the 1990–91 marketing year is the last year of the three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for these kinds of tobacco.

The Secretary is also required: (1) to determine and announce the amounts of the national marketing quotas with respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and cigar binder (types 42–44; 53–55) tobaccos for the 1991–92 marketing year; (2) to convert such marketing quotas into national acreage allotments and announce the allotments; (3) to apportion such allotments, less reserves of not to exceed 1 percent of each kind of tobacco respectively, through county ASCS committees among old farms; and (4) to apportion the reserves for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments. The five kinds of tobacco to which this notice applies account for about 4 percent of the total U.S. tobacco production.

Section 312(b) of the Act provides that the Secretary shall determine and announce, not later than the first day of March 1991, with respect to kinds of tobacco specified in this notice of proposed determination, the amount of the national marketing quota which will be in effect for the 1991–92 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level.

The aggregate reserve supply level for the 1990–91 marketing year for the 5 kinds of tobacco discussed in this notice was determined to be 196 million pounds (55 FR 37725). The proposed reserve supply level for the 1990–91 marketing year will range between 185 million and 230 million pounds. The aggregate total supply for the 1990–91 marketing year is 192 million pounds based on carryover of 137 million and production of 55 million pounds.

Section 301(b)(15) of the Act defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Number 118 (7 CFR part 30) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, & 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23, and 24;
Virginia sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and cigar binder tobacco, comprising types 42, 43, 44, 45, 51, 52, 53, 54, & 55; and
Cigar-filler tobacco, comprising type 41.

Section 301(b)(15) of the Act also provides that any one or more of the types comprising any such kind of tobacco shall be treated as a "kind of tobacco" for the purposes of the Act if the Secretary finds that there is a difference in supply and demand conditions among such types of tobacco which results in a difference in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has issued a determination (15 FR 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price support. Also pursuant to such authority, the Secretary has issued a determination (22 FR 367) that beginning with the 1957–58 marketing year, cigar-binder (types 51–52) shall be treated as a separate kind of tobacco for purposes of marketing quotas and price support Type 45 tobacco is no longer grown. No further action under this section is contemplated at this time.

Section 312(c) of the Act provides that, within 30 days after a national marketing quota is proclaimed in accordance with section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of a national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion through county committees the national acreage allotment to tobacco producing farms (less a reserve not to exceed 1 percent thereof for new farms, and for making corrections and adjusting inequities in old farm allotments) among old farms.

Proposed Determinations

Accordingly, comments are requested on the following proposed determinations for the kinds of tabacco listed for the 1991–92 marketing year:

1. With respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia Sun-cured, and cigar-filler and binder (types 42–44 & 53–55) tobaccos:

a. The amount of the reserve supply level, within the aggregate range of 185 and 230 million pounds;

b. The amount of the national marketing quota for each kind of tobacco for the 1991–92 marketing year, within an aggregate range of 45 million-65 million pounds; and

c. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments, within the aggregate range of 100 and 500 acres.

2. With respect to fire-cured (types 21–23) and dark air-cured (types 35–36) tobacco:

a. The date or period of the referendums for determining whether quotas will be in effect for the 1991–92, 1992–93, and 1993–94 marketing years for such kinds of tobacco; and

b. Whether the referendums should be conducted at polling places rather than by mail ballot (see 7 CFR part 717).

Authority: 7 U.S.C. 1301, 1312 and 1313.

Signed at Washington, DC on January 17, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91–1591 Filed 1–23–91; 8:45 am]

BILLING CODE 3410–05–M

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 1991

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302 (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291 and has been classified as *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1991 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1989 through November 1990.

The new reimbursement rates in dollars are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs

Breakfast	1.0875
Lunch or supper	1.9550
Supplement	.5125

Administrative Costs

a. For meals served at rural or self-preparation sites:

Breakfast	.1000
Lunch or supper	.1850
Supplement	.0500

b. For meals served at other types of sites:

Breakfast	.0800
Lunch or supper	.1550
Supplement	.0400

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals for each type served. The above reimbursement rates, before being rounded-off to the nearest quarters-cent, represent a 4.56 per cent increase during 1990 (from 129.5 in November 1989 to 135.4 in November 1990) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: January 17, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91–1624 Filed 1–23–91; 8:45 am]

BILLING CODE 3410–30–M

The Emergency Food Assistance Program; Availability of Commodities for Fiscal Year 1991

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces: (1) The surplus and purchased commodities that will be available for donation to households under The Emergency Food Assistance Program (TEFAP); and (2) the commodities that will be available for donation to soup kitchens and food banks. The commodities made available under this notice shall be directed to needy persons, including unemployed and homeless persons.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Diane Berger, Head, Policy and Family Assistance Section, Food Distribution Division, Park Office Center, Alexandria, Virginia 22302 or telephone (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Donations of surplus commodities to needy households were initiated in 1981 as part of efforts to reduce stockpiles of government-owned commodities. These donations responded to concern over the costs to taxpayers of storing vast quantities of foods, while at the same time there were persons in need of food assistance.

The Temporary Emergency Food Assistance Program was codified in title II of Public Law 98–8, the Temporary Emergency Food Assistance Act (TEFAA) of 1983, as amended (7 U.S.C. 612c note). Foods made available for distribution under TEFAA were limited to amounts determined by the Secretary to be in excess of the quantities needed to carry out other programs, including Commodity Credit Corporation (CCC) sales obligations and donations to other domestic food assistance programs. As noted above, the program and the act that codified it originally referred to "temporary" emergency food assistance. However, on November 28, 1990 pursuant to section 1772(a) and (c) of

Public Law 101–624, title XVII, the Mickey Leland Memorial Domestic Hunger Relief Act, the progrm was reauthorized for an additional five years and the term "temporary" was deleted from the title of the legislation. Nevertheless, since the public is familiar with the acronyms TEFAA and TEFAP, the Department will retain the acronyms by capitalizing the word "The" where it precedes the name of the Emergency Food Assistance Act or Program.

The Secretary of Agriculture anticipates that the following surplus commodities acquired by the CCC under its price-support activities will be made available in the noted amounts for distribution through The Emergency Food Assistance Program during Fiscal Year 1991: Butter, 72 million pounds; flour, 144 million pounds; and cornmeal, 48 million pounds. Five million pounds of honey were donated through November 1990, but the surplus has been reduced to the point where distribution through this program is not currently feasible. The actual types and quantities of commodities made available by the Department may differ from the above estimates because of agricultural production, market conditions and the distribution of these donated foods to other domestic outlets.

Purchased Commodities

In recent years, the supply of available surplus commodities has been drastically reduced. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales. Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Public Law 100–435, which added sections 213 and 214 to the TEFAA. Those sections required the Secretary to purchase, process, and distribute commodities for household consumption in addition to those surplus commodities otherwise provided under TEFAP for Fiscal Years 1989 and 1990. In section 110 of the Hunger Prevention Act, Congress also required the Secretary to purchase, process and distribute commodities for soup kitchens and food banks for Fiscal Years 1989–91.

As mentioned previously, title XVII of Public Law 101–624, entitled the Mickey Leland Memorial Domestic Hunger Relief Act, was enacted on November 28, 1990. Section 1772(e) of the Leland Act amends section 214(e) of the TEFAA to authorize appropriations for Fiscal Years 1991 through 1995 to purchase, process, and distribute additional commodities for household consumption. For Fiscal Year 1991, $120 million has been appropriated for additional commodities for household use. Section 1774(a)(3) of the Leland Act amended section 110(c) of the Hunger Prevention Act to authorize appropriations for Fiscal Years 1992 through 1995 to purchase, process, and distribute additional commodities for soup kitchens and food banks. For Fiscal Year 1991, $32 million has been appropriated.

The following is the list of additional commodities that the Department anticipates purchasing for distribution to households through TEFAP during this Fiscal Year—rice, cheese, raisins, and the following canned foods: vegetarian beans, green beans, pears, applesauce, and pork or beef. The market price for cheese has recently dropped, thereby making it affordable in sufficient quantities for nationwide distribution to households. Cheese will be purchased as long as market conditions permit. Peanut butter, a product distributed in Fiscal Year 1990 to both households and soup kitchens/food banks, has been subject to recent price increases which have rendered it unaffordable at this time for either program. The Department anticipates the purchase of the following commodities for distribution to soup kitchens and food banks—dry beans, nonfat dry milk, and the following canned foods: peaches, pears, apricots, applesauce, apple juice, corn, green beans, and pork or beef. The amounts to be purchased will depend on the prices USDA must pay.

Dated: January 17, 1991.

Betty Jo Nelson,

Administrator.

[FR Doc. 91–1650 Filed 1–23–91; 8:45 am]

BILLING CODE 3410–30–M

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility no., name and location of stockyard	Date of posting
CO–155, Four Corners Livestock Commission, Inc., Hesperus, Colorado.	December 12, 1990.
IN–164, South Central Indiana Livestock Mktg. Corp., Milltown, Indiana.	December 3, 1990.

Done at Washington, DC this 18th day of January, 1991.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 91–1661 Filed 1–23–91; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 46–90]

Foreign-Trade Zone 72—Indianapolis, Indiana; Application for Subzone, Toyota Industrial Equipment Manufacturing, Inc., Plant Columbus, IN

The comment period for the above case, involving a proposed special-purpose subzone for the forklift truck manufacturing plant of Toyota Industrial Equipment Manufacturing, Inc. (55 FR 49662, 11/30/90), is extended to March 4, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 2835, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 18, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–1668 Filed 1–23–91; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 506]

Resolution and Order Approving the Application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., for a Special-Purpose Subzone for Ingalls Shipbuilding, Inc. in Pascagoula, MS, Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u),

the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of The Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, filed with the Foreign-Trade Zones Board (the Board) on September 27, 1989, requesting special-purpose subzone status for the shipyard of Ingalls Shipbuilding, Inc. in Pascagoula, Mississippi, within the Pascagoula Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to the following conditions: (1) Any steel mill products, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, and not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Ingalls shall advise the Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone at the Shipyard of Ingalls Shipbuilding, Inc. in Pascagoula, Mississippi

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 92, has made application (filed September 27, 1989, FTZ Docket 20–89, 54 FR 42318, 10–16–89), in due and proper form to the Board for authority to establish a special-purpose subzone at the shipyard of Ingalls Shipbuilding, Inc., in Pascagoula, Mississippi;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, therefore, in accordance with the application filed September 27, 1989, the Board hereby authorizes special-purpose subzone status at the shipyard of Ingalls Shipbuilding, Inc. in Pascagoula, Mississippi, designated on the records of the Board as Foreign-Trade Subzone 92B, and as described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and to the condition in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone sites shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone facilities in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC., this 17th day of January, 1991, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 91–1667 Filed 1–23–91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–588–019]

Cyanuric Acid From Japan: Final Results of Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Cyanuric acid from Japan; final results of antidumping duty administrative review.

SUMMARY: On November 19, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty finding on cyanuric acid from Japan (55 FR 48145). This review covers one manufacturer/exporter of cyanuric acid to the United States and one trading company for the period April 1, 1989, through March 31, 1990. The final margin assigned to Shikoku Chemicals Co. (Shikoku) and Mitsubishi Corporation (Mitsubishi), an unrelated trading company, is 10.93 percent.

EFFECTIVE DATE: January 24, 1991.

FOR FURTHER INFORMATION CONTACT: Carole A. Showers or Julie Anne Osgood, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3217 and 377–0167, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On January 18, 1990, the Department published the final results of its most recently completed administrative reviews which covered the periods April 1, 1985, through March 31, 1986, and April 1, 1986, through March 31, 1987 (55 FR 1690). The preliminary results of the antidumping duty administrative reviews covering the periods April 1, 1987, through March 31, 1988, and April 1, 1988, through March 31, 1989, for the order on cyanuric acid, were published on January 3, 1991 (54 FR 239). This notice also included the preliminary results of the antidumping duty administrative reviews for the orders on

dichloro isocyanurates (DCA) and trichloro isocyanuric acid (TCA) (the "chlorinated derivatives" of cyanuric acid) covering the periods April 1, 1987, through March 31, 1988, and April 1, 1988, through November 20, 1988, the "gap" review period. The Department is conducting this gap review as a result of its tentative determination to revoke the order with respect to the chlorinated derivatives (53 FR 46896). The Department will make its final determination whether to revoke the order with respect to the chlorinated derivatives upon completion of the sixth or gap review. We have conducted a review of cyanuric acid separate from its chlorinated derivatives for the period covered by this review, April 1, 1989, to March 31, 1990.

On November 19, 1990, the Department published in the Federal Register (55 FR 48145) the preliminary results of this administrative review on cyanuric acid from Japan. We gave interested parties an opportunity to comment on the preliminary results. Neither petitioner nor respondents submitted comments, in accordance with § 353.38 of the Department's regulations, within the time limits specified in the notice of preliminary results. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of cyanuric acid (also known as isocyanuric acid), used in the swimming pool trade. Cyanuric acid is sold in three basic consistencies: powder, granular, and tablet. Prior to the review period, cyanuric acid was classifiable under item 425.1050 of the *Tariff Schedules of the United States Annotated* (TSUSA). Since January 1, 1989, the merchandise is classifiable under item 2933.69.50.50 of the *Harmonized Tariff Schedule* (HTS). The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of cyanuric acid to the United States and one trading company for the period April 1, 1989, through March 31, 1990.

Use of Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for entries of the subject merchandise from Shikoku and Mitsubishi.

In deciding what to use as best information available, § 353.37(b) of the Department's regulations provides that the Department may take into account whether a party refuses to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department assigns to that company the highest margin for the subject merchandise of: (1) The highest margin calculated for that company in any previous review; (2) the highest margin calculated for any respondent that supplied adequate responses in this review; or, (3) the margin for that company calculated in the less than fair value (LTFV) investigation.

As explained in our preliminary results, Shikoku and Mitsubishi refused to respond to the Department's request for information. Therefore, as best information available, we have assigned the rate from the LTFV investigation, 10.93 percent. Furthermore, we have established one rate for cyanuric acid produced by Shikoku because there is no evidence that Shikoku was unaware that such merchandise was destined for the United States when sold to Mitsubishi.

Final Results of the Review

We determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
Shikoku Chemicals Co...	04/1/89-3/31/90	10.93

The Department will instruct the Customs Service to assess antidumping duties on all apppropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service.

The following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of cyanuric acid from Japan that are entered or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the final results of the most recently completed review applicable to each of these firms (55 FR 1690, January 18, 1990); (2) the cash deposit rate for the companies included in this review will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1990, and who is unrelated to any reviewed firm, will be 5.76 percent. (This is the calculated rate applicable to new manufacturers and/or exporters from the most recently completed administrative review where shipments were made.)

These deposit requirements are effective for all shipments of cyanuric acid from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and § 353.22(c)(5) of the Department's regulations.

Dated: January 17, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-1673 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Iron Construction Castings From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 5, 1990 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on iron construction castings from the People's Republic of China. The review covers the periods May 1, 1987 through April 30, 1988 and May 1, 1988 through April 30, 1989.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, the final results are changed from those presented in the preliminary results.

EFFECTIVE DATE: January 24, 1991.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Laurie Lucksinger, Office of Antidumping Compliance.

International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 22939) the preliminary results of its administrative review of the antidumping duty order on iron construction castings from the People's Republic of China (PRC) (51 FR 17222, May 9, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of iron construction castings, limited to manhole covers, rings and frames; catch basin grates and frames; cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These acticles must be of cast iron, not alloyed, and not malleable. Until January 1, 1989, iron construction castings were classified under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classified under the Harmonized Tariff System (HTS) item numbers 7325.10.00.00 and 7325.10.00.50. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

These reviews cover the periods May 1, 1987 through April 30, 1988 and May 1, 1988 through April 30, 1989.

As we stated in our preliminary results of administrative review, the PRC is a state-controlled economy for purposes of these administrative reviews. We initiated the 1987–1988 review prior to the effective date of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act), and, therefore, used the hierarchy of preferences for determination of foreign market value (FMV) contained in section 773(c) of the Tariff Act for that review. In accordance with the Tariff Act prior to the 1988 amendments, § 353.8 of the Commerce regulations (1988) establishes a preference for determining FMV based upon sales prices or costs in a non-state-controlled-economy country at a stage of economic development comparable to that of the state-controlled-economy country.

For the 1987–1988 review, we attempted to identify producers or exporters of iron construction castings in India, Indonesia, Pakistan, the Philippines, Sri Lanka, Bolivia, Jamaica, Morocco, Zambia and Zimbabwe, countries which are determined to be comparable to the PRC in stage of economic development. We were able to identify and contact iron-construction-castings producers in the Philippines, Morocco, Bolivia and Jamaica. We requested both sales and cost information concerning the merchandise covered by the 1987–1988 review. However, none of the firms responded. We were also unsuccessful in identifying producers or exporters of iron construction castings in any of the other countries.

Therefore, in accordance with § 353.8(c) of the Commerce regulations (1988), we calculated FMV based on the Chinese factors of production as valued in a non-state-controlled-economy country at a stage of economic development comparable to that of the PRC. Since we were able to obtain sufficient company-specific information from producers of the subject merchandise, we valued the Chinese factors of production using publicly available statistical sources. The Philippines is the only country at a comparable level of development to the PRC for which we could locate sufficient information to satisfy the requirements of our analysis.

For the 1988–1989 review, we used the hierarchy of preferences contained in the 1988 Act, determining FMV by using the factors of production according to section 773(c)(3) of the Tariff Act. We valued the Chinese factors of production using publicly available data from the Philippines, as we did in the 1987-1988 review. As in 1987–1988, the Philippines was the only country at a comparable level of development to the PRC for which we could locate information to satisfy the requirements of our analyses

In the course of the 1987–1988 review, the Beijing and Guangdong branches of the China National Metals and Minerals Import and Export Corporation (Minmet Beijing and Guangdong Minmetals, respectively) separately claimed that each had changed in status from branches of the China National Metals and Minerals Import and Export Corporation to separate corporate entities since the original investigation of sales at less than fair value. Each claimed that they adopted new names after the July 1, 1987 separation from the national corporation. In our supplemental questionnaire for the 1987–1988 review, we asked respondents to describe and document the changes which occurred between them and the national import/export corporation.

Minmet Beijing provided certification from the Ministry of Foreign Economic Regulations and Trade stating that Beijing Metals and Minerals Import and Export Corporation has been separated from China National Metals and Minerals Import and Export Corporation. The certification noted that Minmet Beijing became an independent legal entity beginning on July 1, 1987. It stated that Minmet Beijing maintains independent accounting and is self-responsible for profits and losses. The certification statement further noted that the change in status occurred pursuant to the regulations of the State Council and the Ministry of Foreign Economic Regulations and Trade. Although Guangdong Minmetals made similar claims concerning its independence, accounting system, and accountability for its own profits and losses, it did not provide ministerial-level certification to this effect.

Minmet Beijing and Guangdong Minmetals also provided copies of business licenses issued in 1988 and 1989, letterhead and business cards respectively identifying the names of the enterprises as Beijing Metals and Minerals Import and Export Corporation and Guangdong Metals and Minerals Import and Export Corporation. The licenses show that each entity is a state-owned corporation.

Subsequent review of the information on the record has led us to reevaluate the claims made by Minmet Beijing and Guangdong Minmetals with respect to separation and independence from the national corporation for the following reasons:

—The ministerial-level certification provided Minmet Beijing applies only to the Beijing Branch of the China National Metals and Minerals Import and Export Corporation, and does not address the relationship between the national corporation and any of its other provincial and municipal (city) branches.

—Minmetals Beijing submitted a contract dated February 27, 1989, on the public record, identifying the name of the contracting party as the Beijing (City) Branch of the China National Metals and Minerals Import and Export Corporation. The contracting party is explicitly identified as a municipal branch of a national organization. Furthermore, the contract was entered into more than 18 months after the reported date of separation and occurs during the 1988–1989 review.

—The U.S. Customs Service provided records of several entries, which include invoices, identifying the exporting entities as the Anhui (Province) Branch, the Beijing (City) Branch, the Guangdong (Province) Branch and the Liaoning (Province) Branch of the China National Metals and Minerals Import and Export Corporation. In addition, the U.S. Customs Service provided entries and invoices from the Liaoning Branch of the China National Machinery Import and Export Corporation. In each of the examples cited above, the exporter is identified on the invoices as either the provincial or municipal (city) branch of a national import/export corporation.

These contradictory indications have led us to reevaluate the claims of Minmet Beijing and Guangdong Minmetals concerning independence from their national import/export corporation. We believe these indications show that Minmet Beijing and Guangdong Minmetals have continued to conduct their business as branch offices of the China National Metals and Minerals Import and Export Corporation. For the purposes of these final results of administrative review, we regard them as parts of a single import/export corporation.

In reevaluating our preliminary decision to apply separate margins to individual branches, we have examined the record to determine whether we have information which indicates that the national import/export corporations are independent from one another. We have found no such information. The respondents stated in their questionnaire responses that they were state-owned entities. Our determination that the PRC is a state-controlled economy in which all entities are presumed to export under the control of the state leads us to question the application of multiple rates, absent a clear showing of legal, financial and economic independence. Thus, we conclude that a single country-wide rate is appropriate for this case. We have determined one weighted-average margin for each review period for all exports from the PRC of iron construction castings.

We also note that we inadvertently omitted the name of China National Machinery Import and Export Corporation in our listing of the 1988–1989 margins in our notice of preliminary results of administrative review. China National Machinery Import and Export Corporation was one of eight producers and exporters named in our notice of initiation for the 1988–1989 review (54 FR 26069). In the body of our preliminary results, we stated that only two of these entities, Minmet Beijing and Guangdong Minmetals, responded to our questionnaires and that we used the best information otherwise available to determine the rates for the non-responsive firms. Therefore, although we did not separately identify a margin for China National Machinery Import and Export Company in our preliminary results of review, the body of the notice clearly indicated that they were given the same rate as other non-responsive firms.

Analysis of Comments Received

On May 26, 1989, we invited interested parties to comment on the appropriate factor values and valuation methodologies for each separate factor of production reported by the Chinese producers of iron construction castings in the 1987–1988 review. We received comments from petitioners and respondents on July 27, 1989. In addition, on March 3, 1990, we requested interested parties to provide factor values for foreign inland freight, depreciation, packing and water for the 1988–1989 review. Petitioners and respondents provided these comments on March 14, 1990. We took the comments submitted for each review into account for our preliminary results. Once the preliminary results of administrative review were published, we invited interested parties to comment on the preliminary results. Petitioners, respondents and importers each submitted case briefs commenting on the preliminary results. Similarly, all parties, with the exception of counsel for South Bay Foundry 1989 and Olympic Foundry, importers, submitted rebuttal briefs commenting on the issues raised in the case briefs. At the request of respondents, Minmet Beijing and Guangdong Minmetals, the Department also held a public hearing on August 16, 1990. Counsel for petitioners, respondents and importers each presented arguments summarizing the issues raised in the case and rebuttal briefs. Upon careful evaluation of the parties' comments on the preliminary results, the Department has revised its calculations for these final results of administrative review. The Department's response to the interested parties' comments includes an explanation of the Department's decisions to make, or not to make, the changes suggested in these comments.

Comment 1: Petitioners argue that the Department failed to account for the cost of bolts or other special features or attachments in its calculation of the foreign market value of the thirteen models that respondents reported having such features.

Department's position: We are satisfied that respondents did not fail to accurately account for their material consumption or labor hours for the production of iron construction castings, including special features and attachments. Respondents noted in their rebuttal brief of August 3, 1990, that most special features and attachments were made of cast iron, rather than of steel, stainless steel or brass, so that the material and labor costs of producing the features and attachments are included in the material consumption and labor time reported in the response. Respondents explained that certain special bolts of brass alloy materials, which are not available in China, were supplied to Minmet Beijing by the importer at no cost. Therefore, since the cost of materials and labor for special features and attachments is already accounted for in our calculation of constructed value, we have not increased the cost of certain models to account for bolts or special features in the final results of administrative review.

Comment 2: Petitioners argue that the Department should include container stuffing and container drayage charges in its calculation of imputed brokerage and handling charges.

Department's position: We disagree that container stuffing and container drayage charges represent brokerage and handling expenses. Container stuffing and container drayage charges are expenses for the transport, loading and unloading of containers within a port. They are often included in ocean freight charges, although they are not always itemized when they are incurred. Since we have no reason to believe that respondents understated the reported ocean freight expense, or incurred container stuffing and/or drayage charges, we have not adjusted U.S. price to account for container stuffing and drayage charges.

Comment 3: Petitioners argue that the cost of aluminum used to create patterns should be included in the Department's calculation of constructed value for the 1988–1989 review. They point out that the Department did not use the figures reported by Minmet Beijing in its questionnaire response. They note that Guangdong Minmetals did not report aluminum consumption rates for 1988–1989 despite the fact that they exported 35 casting models which require aluminum molds.

Department's position: We agree that aluminum consumption should be accounted for in our calculation of

constructed value. Therefore, we have included the aluminum consumption figures reported by Minmet Beijing in our calculation of material cost. On the other hand, we do not have any indications that Guangdong Minmetals understated its material consumption, including aluminum. Therefore, with respect to Guangdong Minmetals for the 1988–1989 review, we have not increased the cost of materials to account for additional aluminum consumption.

Comment 4: Petitioners argue that the Department should use the highest cost for casting models produced by the Shaoguan City Foundry and Guangzhou City Foundry since neither foundry reported its factors of production for the 1988–1989 review.

Department's position: We agree. For the final results of review in the 1988–1989 period, we have calculated foreign market value for the castings purchased by Guangdong Minmetals from Shaoguan City Foundry and Guangzhou City Foundry using the highest constructed value calculated for any of the foundries included in this review as the best information available.

Comment 5: Petitioners argue that the Department should adjust the U.S. price to account for after-sale warehousing expenses reported by Guangdong Minmetals in its 1988–1989 response.

Department's position: We agree that an adjustment should be made to account for after-sale warehousing expenses. Guangdong Minmetals reported that it stored finished merchandise in a warehouse for an average of one week after the time of sale and before the time of shipment. Therefore, because we are calculating the U.S. price on a purchase-price basis, we made an adjustment to constructed value, using, as the best information otherwise available, petitioners' estimate of the average U.S. costs for storing finished castings in rented warehouses during 1988.

Comment 6: Petitioners argue that the Department should determine whether Chinese exporters or the U.S. importers paid the U.S. merchandise processing fee of 0.17 percent or the harbor maintenance fee of 0.04 percent charged by the U.S. Customs Service on entries of construction castings subject to this review.

Department's position: Petitioners have submitted no evidence on the record which indicates that the Chinese exporters paid the merchandise processing fees or harbor maintenance fees. Since the U.S. Customs Service assesses and collects the merchandise processing fee and the harbor maintenance fee from the U.S. importers, they represent an inappropriate deduction from U.S. price for the purpose of calculating dumping margins. Therefore, we have not deducted them from U.S. price in our final results of review.

Comment 7: Petitioners argue that the Department should determine whether the respondents have already reimbursed importers or agreed to reimburse importers for antidumping duties on sales subject to these reviews.

Department's position: Petitioners have provided no evidence on the record that respondents are reimbursing importers for antidumping duties on sales subject to these reviews. Furthermore, 19 CFR 353.26 requires that importers certify to the U.S. Customs Service that they have not entered into an agreement with the manufacturer or exporter for the payment or refunding of antidumping duties. Therefore, any reimbursement is an appropriate matter for the U.S. Customs Service.

Comment 8: Respondents argue that the Department should not use the official Philippine import statistics as a measure of factor values. They argue that many categories are basket categories which include materials of wildly fluctuating value.

Department's position: We are satisfied that the official import statistics of the Philippines are reasonable measures of the factor values in the PRC. We were able to accurately identify imports of virtually every material used to produce iron construction castings during each period covered by these administrative reviews. These statistics represent the official trade statistics of the Philippine government. The commodity classification system follows the Standard International Trade Classification of the United Nations, a well-respected and widely-used product classification system.

With respect to the price fluctuations within each category, we note that the import prices we used are weighted-average figures calculated on an annual basis. This averaging of import prices reduces the effects of any price fluctuations which may occur.

The materials are imported from a variety of market-economy sources. Therefore, these statistics reflect the average price charged by a number of suppliers.

As long as the categories appropriately include the material used to produce iron construction castings, the price fluctuations in these statistics reflect the supply and demand in the world markets. Due to the random nature of these fluctuations, we found no indication that price fluctuations, as such, produced a consistent bias. Therefore, we determined the cost of materials using, as the best information otherwise available, the weighted-average CIF value of imports into the Philippines from all market-economy countries.

Comment 9: Respondents claim that the Department did not determine whether the product classification codes used by the Philippine government in its import statistics represent the type of materials actually used by the Chinese in the production of the subject merchandise in the PRC.

Department's position: We specifically requested respondents to provide technical information concerning the material inputs required to produce iron construction castings in our original questionnaire and in our letter of May 26, 1989 on factor values. We used the information provided by respondents and consulted technical manuals to match the materials reported by the Chinese with the most appropriate product categories. We were able to accurately identify imports of virtually every material factor used to produce iron construction castings. We are, therefore, satisfied that these classification codes represent the type of materials actually used in the Chinese production. We note that the representation might be improved if quality and form of the factors can be distinguished. However, the information provided by respondents did not allow us to identify the quality of material used by the Chinese or the form in which it was sold (liquid or solid, highly pulverized or lumpy, damp or dry). Therefore, without the information required to limit the range of import values, we used, as the best information otherwise available, the weighted-average CIF value of imports into the Philippines to value direct material costs.

Comment 10: Respondents argue that the Department should not use the Philippine import prices to determine the cost of materials because few materials were imported from countries at a comparable level of economic development to the PRC. They further claim that the import prices do not represent the prices or costs of these materials within the Philippines.

Department's position: The Philippines produces iron construction castings, but it does not produce the materials required to make the castings. Therefore, the prices of the imported material factors reflect the prices paid by producers in the Philippines. The origin of the imported materials is irrelevant as long as the average of the

import prices represents the cost of producing castings in the Philippines, which is a country at a level of economic development comparable to the PRC.

Comment 11: Respondents and importers argue that the Department should eliminate "aberrant" prices from the calculations of the weighted-average value of imports into the Philippines.

Department's position: We are satisfied that the weighted-average import value of materials represents a fair measure of the prices actually paid by producers in the Philippines for those materials for the reasons set forth in our responses to Comment 8 and Comment 9. We have chosen to use weighted-average prices in order to avoid arbitrary selections of "appropriate" values.

Comment 12: Respondents claim that the Department overstated the value of the indirect materials (sand, wood, clay binder, banana oil, thinner, talc, coal powder, *etc.*) by separately valuing each factor according to its weighted-average import price into the Philippines. They note that the import values for sand vary from $46.72 metric ton from Thailand to $1,491.80 per metric ton from Japan. They point out that the Department used an import value of sand which is 58 percent higher than the import value of pig iron. They conclude that such discrepancies within the same import category indicate that major differences exist in the types of sand imported into the Philippines from other countries. Therefore, they propose that the Department value indirect materials by using either the ratio of "additives and supplies" to total material cost or the absolute value of "additives and supplies" provided by petitioners in response to the Department's request for comments on valuation methodology.

Department's position: We agree. The Department consulted with industry experts concerning the physical characteristics and cost of the two types of sand identified in the Philippine import category of "blasting and foundry sand." We learned that blasting sand, and sand used as an abrasive, is generally more expensive than the foundry sand used to produce iron construction castings. Since it is our intention to apply the value of foundry sand, not blasting sand, to our calculations, we conclude that the import category for blasting and foundry sand does not accurately reflect the type of sand used in the production of iron construction castings. In addition, in light of similar discrepancies with respect to bentonite, talc powder, thinner and banana oil, we have reevaluated our preliminary decision to separately value each indirect material used in the production of iron construction castings with the weighted-average import price into the Philippinies. Therefore, we valued all indirect materials for these reviews using, as the best information otherwise available, the estimate of U.S. industry costs for "additives and supplies" provided in petitioners' July 27, 1989 comments on valuation methdology.

Comment 13: Respondents argue that the Department distorted the preliminary results by its exclusive reliance on Philippine import statistics as a measure of the cost of materials. They request the Department to consider information from other countries to value indirect materials on the grounds that the information used by the Department leads to an unreasonable and inaccurate result. They note that the Department is not required to value all factors of production using information from a single surrogate country.

Department's position: Although we are not required to rely exclusively on factor values from a single country, we use material prices or costs from a variety of countries only where we determine that it would be unreasonable to do otherwise. Furthermore, as we explained in our responses to Comment 8 and Comment 9, we are satisfied that our choice of surrogate values from the Philippines produces a reasonable result with respect to direct materials. However, we valued indirect materials using petitioners' estimate of the U.S. industry costs for "additives and supplies" as we explained in Comment 12.

Comment 14: Respondents argue that, if the Department persists in valuing indirect materials on the basis of price, the prices in the Department's calculations must reflect the materials actually used. They note that the Philippine import prices for indirect materials are extremely high, fluctuate widely and lead to an unreasonable result.

Department's Position: As we explained in our response to Comment 12, we are now calculating indirect materials using petitioners' estimate of the cost of "additives and supplies" to the U.S. industry. Therefore, the issue with respect to the Department's choice of import category, and the price fluctuations within those categories, are moot.

Comment 15: Respondents and importers claim that the Department's method of increasing the cost of material inputs to account for transportation from the point of purchase to the foundry results in the double-counting of the inland freight costs for materials.

Department's Position: We agree. The CIF import prices reported in the official trade statistics of the Philippines record the landed value of the goods in the Philippines and the price which Philippine producers actually pay for each commodity. It includes the inland freight required to transport materials from the point of production to the point of export, and, the ocean freight required to transport the goods from the country of origin to the Philippines. Since foreign inland freight is already included in the weighted-average import prices used to value each material, we have not increased material prices to account for the freight expense of transporting materials from the point of purchase to the foundry for the final results of review.

Comment 16: Respondents claim that the Department should not use U.S. trucking costs as a surrogate value for foreign inland freight since the Chinese actually transported covered products from the foundry to the port by rail.

Department's Position: We were unable to value foreign inland freight using values from the Philippines since the Philippines does not have a viable rail system. Therefore, in our letter of May 26, 1989, we requested interested parties to comment on factor values for foreign inland freight for the 1987–1988 review period. Respondents failed to provide any values for foreign inland freight in their comments of July 27, 1989. Therefore, in the 1987–1988 review, we used as the best information otherwise available, petitioners' estimate of the foreight rates available to U.S. producers of iron construction castings. Similarly, in our letter of March 3, 1990, we requested interested parties to provide information concerning foreign inland freight costs for the 1988–1989 period. Relying on a public response in the Indian castings case, respondents provided an amount of expense incurred in Indian rupees. This figure was unusable since it did not take distance into account. Therefore, we also used the best information otherwise available for the 1988–1989 period, which, again, was petitioners' estimate of the freight (truck) rates available to U.S. producers of iron construction castings.

Comment 17: Respondents claim that the Department's calculation of the depreciation expense is inconsistent with the information on the record and inconsistent with the manner in which depreciation expenses are incurred and reported. They claim that the Chinese foundries incurred no depreciation

expense during the period of these reviews since the acquisition cost of most of the equipment used to manufacture iron construction castings was fully written off before the review period began. They point out that if the Chineses equipment were depreciated according to the surrogate depreciation schedule in India submitted in their March 14, 1990 comments on depreciation for the 1988–1989 review, most equipment would be written off before the review period. Therefore, respondents propose that the Department compare the purchase dates of the machinery used to produce iron construction castings with the U.S. rates of depreciation to determine whether the Chinese foundries had any depreciable assets during the periods of review.

Department's Position: Respondents did not provide sufficient information prior to the preliminary results of review to demonstrate that the Chinese producers of iron construction castings had no depreciable assets during the review period.

—Songzhuang Foundry reported the acquisition dates of the machinery and equipment used to produce iron construction castings in each review, revealing that the vast majority of the machinery was purchased two to three years before the 1987–1988 review began.

—Dongguan Foundry and Shaoguan Foundry only reported the acquisition date of each furnace, stating that the useful life of the furnaces used to produce iron construction castings is five years. However, Dongguan and Shaoguan did not provide a list of the other machinery and equipment used to produce iron construction castings in either review.

—As we noted in our response to Comment 4, Shaoguan City Foundry and Guangzhou City Foundry did not provide any information concerning the factors of production; therefore, we have no information concerning the age or use of the equipment used to produce iron construction castings in those foundries.

In addition, in our letter of May 26, 1989, we requested interested parties to comment on the appropriate surrogate values for each item of machinery and equipment listed in the questionnaire responses. Respondents did not address depreciation in their response. Therefore, in the 1987–1988 review, we used as the best information otherwise available, petitioners' estimate of depreciation as a percentage of the cost of manufacturing for the U.S. industry.

In the 1988–89 review, the Department requested interested parties to submit comments of factor values for depreciation in its letter of March 3, 1990. Respondents provided an amount obtained from the public record in the case of iron construction castings from India. We could not use this figure because it was expressed as an absolute amount of expense and did not allow us to calculate depreciation as a percent of the cost of manufacturing. Therefore, for the 1988–1989 review, we also used the best information otherwise available, which was petitioners' estimate of depreciation as a percentage of the cost of manufacturing for the U.S. industry.

Comment 18: Respondents and importers argue that the Department should not use petitioners' estimate of U.S. depreciation expense as a percent of the total cost of manufacturing because there is no indication that either the type of equipment that petitioners use, or its value, is comparable to the equipment used to produce iron construction castings in the PRC.

Importers argue that half the value of the U.S. capital equipment is attributable to environmental and labor saving devices which are non-existent in the PRC. Therefore, they argue that the Department should decrease the depreciation rate reported by petitioners by at least 50 percent to account for differences in equipment.

Respondents propose that if the Department determines that any of the foundries had any depreciable assets during the review period, then the value of the equipment which is comparable to the equipment used in the PRC should be determined, in a surrogate country or the United States, and the depreciation rate should be applied to the surrogate value to determine the depreciation expense allocable to each review period.

Department's position: As we noted in response to Comment 17, before we issued our preliminary results of review, we requested interested parties to provide a surrogate value for each piece of machinery used to produce iron construction castings or a methodology for determining depreciation expense for each period of review. The above-mentioned proposal to compare the equipment used to produce iron construction castings in the United States and China was made after the preliminary results of review and provides no data with which to calculate the results. Therefore, we used petitioners' estimate of depreciation as a percentage of the total cost of manufacturing for the U.S. industry as the best information available.

Comment 19: Respondents argue that the Department overstated the direct labor hours required to produce covered products at Songzhuang Foundry by dividing the total number of man-hours worked at Songzhuang Foundry by the factory's total production volume of castings to obtain the labor hours per ton on a foundry-wide basis. They claim that casting products not covered by the order require more hours to produce than covered products. Therefore, they argue that the Department should use the average labor hours per ton reported in the questionnaire responses in its valuation of labor expense for Songzhuang Foundry.

Department's position: Although respondents reported the total number of labor hours for Songzhuang Foundry, and the labor rate per unit of iron construction castings covered by the review, as requested, they did not provide all the information necessary to consistently calculate the factors of production on the basis of covered products alone. For example, respondents reported the material consumption for covered products exported to the United States and for all products produced at the foundry, but not the material consumption for all covered products. They reported the total foundry-wide electricity consumption, but not electricity consumption for covered products. They reported separate labor rates for water boxes, manhole covers, rings and grates, but did not report the labor rates for uncovered products. Therefore, for Songzhuang Foundry, we calculated all of the factors of production, including the labor rate, at the factory level, which was the only level at which we could consistently value the factors using the information reported in the response.

Comment 20: Respondents and importers claim that the Department overstated the amount of indirect labor expense by applying the total amount of indirect labor expenses incurred for the foundry to the production of covered products. They note that, in addition to covered products, the two foundries in Guangdong province produce products which are not subject to the order, such as shoes, wooden packing boxes, paper boxes, metal windows, trailer parts and castings which are not subject to the order. They argue that the Department should correct its calculation by allocating the indirect labor expense for each factory according to the ratio of the production of iron construction castings to the total production of each factory.

Department's position: We agree with respondents that the indirect labor should be attributed to the products which generated those expenses.

For the preliminary results of review, we calculated constructed value for Songzhuang Foundry on a factory-wide basis and applied the indirect labor expenses to the production of the entire factory in each review. Therefore, the indirect labor expenses for Songzhuang Foundry were properly allocated and we have not changed our calculation on constructed value for these final results of review.

Respondents reported in their questionnaire response for 1988–1989 that iron construction castings represent one-third of the production of Dongguan and Shaoguan Foundries in Guangdong Province. Therefore, for these final results of review, we have allocated one-third of the value of the indirect labor expenses associated with each foundry to the production of iron construction castings.

Comment 21: Respondents argue that the Department should not include national holidays and vacation time in its calculation of indirect labor.

Department's position: Although respondents argued in their case briefs that the Department should exclude vacation and holiday pay from their valuation of indirect labor costs, they did not provide any information prior to the preliminary results of review indicating that Chinese supervisors and service personnel do not receive paid holiday and vacation time. Respondents reported that foundry workers work eight hours a day, six days a week. Therefore, we assumed that management and support personnel also work 312 days per year. We calculated annual wage rates for skilled and unskilled labor by multiplying the daily wage rates for skilled and unskilled labor in the Philippines by 312 working days per year. We applied the annualized wage rates for skilled and unskilled labor to the appropriate category and number of management and support personnel listed in the response for each foundry. We then divided the total amount of indirect labor expense calculated for each foundry by the total volume of its castings production to arrive at the value of indirect labor per metric ton.

Comment 22: Respondents note that in its calculation of indirect labor expense for the 1988–1989 review, the Department erroneously applied the labor cost for two doctors to Dongguan Foundry, which actually employed only one doctor.

Department's position: We agree. We have corrected the error for our final calculations.

Comment 23: Respondents claim that the Department overstated the cost of electricity by dividing total electricity consumption by total production in Songzhuang Foundry. They claim that in foundries, electricity is a function of man-hours, and since the average number of man-hours required to produce iron construction castings is lower than the average number of man-hours required to produce all products, the Department should allocate the total electricity cost to iron construction castings on the basis relative production quantity of iron construction castings to all products.

Department's position: As we explained in our response to comment 19, we calculated all the factors of production for Songzhuang Foundry on a foundry-wide basis since Songzhuang did not provide the information required to consistently calculate all the factors of production on the basis of covered products alone. Therefore, for these final results of review, we calculated electricity expense by dividing Songzhuang's total electricity consumption by its total output, as we did in the preliminary results of review.

Comment 24: Respondents argue that the Department should not use the actual amounts that Minmetals Beijing paid to COSCO, since COSCO is the state carrier for a non-market economy country.

Department's position: We are satisfied that the amount actually paid to COSCO in U.S. dollars for shipment to the United States closely approximates market rates for the ocean freight. In other proceedings, we verified that the U.S. dollar rates paid to COSCO were equal to or greater than the rates filed by market economy carriers with the Federal Maritime Commission. Since COSCO is also required to file its ocean freight rates with the Federal Maritime Commission, non-market-economy rates can be consistently compared with market-economy rates and monitored over time. In addition, since COSCO requires corporations to pay freight expenses in U.S. dollars, the amount can be adequately valued for the purpose of calculating U.S. price. Therefore, we have used the ocean freight expenses actually paid to COSCO to calculate ocean freight for the 1988–1989 review. In the 1987–1988 review, where Minmet Beijing failed to report the amount of ocean freight expense paid to COSCO, we calculated the adjustment for ocean freight using the best information otherwise available which we determined to the the difference between the CIF and FOB values of exports from the Philippines to the United States.

Comment 25: Respondents and importers argue that the Department should not use the difference between the CIF and FOB values of exports from the Philippines to the United States as the best information available rate to calculate ocean freight for Minmet Beijing in the 1987–1988 review. They note that the Philippine ocean freight rate does not reflect the actual market conditions of ocean carriage from the PRC to the United States. Instead, respondents propose that the Department apply the rates reported in their letter of July 17, 1989, in response to the Department's request for comments on valuation of the factors of production.

Department's position: As we noted in our response to Comment 24, we used the best information otherwise available to calculate ocean freight in the preliminary results of review for 1987–1988 because Minmet Beijing failed to provide the actual freight expense incurred during the period of review. The surrogate rate proposed in respondent's July 17, 1989 letter represents an unadjusted tariff rate filed with the Federal Maritime Commission by China Travel Service (H.K.) Ltd., a non-vessel operating common carrier (*i.e.*, a freight broker) for a period beginning in 1984. The unadjusted tariffs reported to the Federal Maritime Commission do not represent accurate measures of the expenses actually paid because they represent basic shipping rates to which numerous fees and adjustments are added. In addition, respondents' proposed rate was put into effect three years before the period of review. Therefore, since Minmet Beijing failed to provide the actual expenses paid for the shipment of covered products to the United States during the period of review, we have used the difference between the CIF and FOB values of exports from the Philippines to the United States as the best information available for ocean freight in the 1987–1988 review.

Comment 26: Respondents and importers argue that the Department double-counted brokerage and handling by deducting it from U.S. price. They argue that the brokerage and handling charges paid in renminbi (Chinese currency) during the review period relate to brokerage of inland freight within China, not to the customs brokerage of foreign shipments. Therefore, they maintain, these brokerage and handling expenses should not be deducted from U.S. price.

Department's position: In our preliminary results of review, we used the best informaiton otherwise available to calculate an adjustment for brokerage and handling, which respondents reported paying in renminbi (Chinese

currency). We understood that the reported expenses represented customs brokerage charges, rather than freight brokerage charges. As we noted in a memorandum to the file on May 29, 1990, import/export corporations generally issue export licenses without a customs brokerage fee. In addition, respondents explained that the brokerage and handling expenses reported in their questionnaire responses referred to freight brokerage expenses. Therefore, we have not deducted brokerage and handling from U.S. price for these final results of review.

Comment 27: Respondents and importers argue that the Department imputed credit expense on certain U.S. sales when, in fact, Minmet Beijing incurred no such expense. They argued no credit expenses were incurred on certain transactions since the terms of payment were letter of credit at sight, documents against payment at sight or documents of acceptance at sight. They claim that some customers paid interest on the number of days between shipment and payment.

Importers argue that the Department should either remove the adjustment of imputed credit from the current calculation, or, if that adjustment is to remain, add the amount of the interest reimbursement to the U.S. price.

Department's position: We used the information concerning the actual number of days between shipment and payment provided by respondents for each import/export corporation in each review to calculate our adjustment for credit. The terms of sale do not indicate when payment actually occurs. Therefore, we did not accept the number of days for which the letter of credit, the documents against payment, or the documents against acceptance were granted as the number of days for which payment was outstanding. In a similar fashion, the interest fees noted on certain contracts do not reveal the actual amount of interest paid. Therefore, we used, as the best information otherwise available, the number of days between shipment and payment reported by respondents in the questionnaire response. For Minmet Beijing, we imputed credit on a shipment-specific basis for the reported number of days between shipment and payment in the 1987–1988 review. Otherwise, we used the average number of days outstanding reported by respondents in their questionnaire and supplemental responses.

Comment 28: Importers argue that the Department's decision to withhold its choice of surrogate country until the preliminary results of review denies all parties the opportunity to comment on the choice of surrogate country and to provide the factors of production in that country.

Department's position: The Department sent cables to ten countries seeking information concerning potential surrogate producers of the subject merchandise. We contacted more than 32 producers of iron construction castings identified in four of those countries, requesting surrogate prices and/or costs information. Our letter of May 26, 1989 stated that we intended to use the factors of production to calculate the foreign market value for the 1987–1988 review. We attached a list of all the factors of production reported by the Chinese producers of iron construction castings and asked interested parties to comment on valuation methods or value for each of these factors and to provide the country and source of each proposed values. None of the interested parties provided comments on the Department's choice of surrogate country or countries at that time. Therefore, we are satisfied that interested parties had an opportunity to comment on the choice of surrogate country or to provide the factors of production in that country.

Final Results of Review

Based on our analysis, the final results of review are changed from those presented in the preliminary results. We calculated a weighted-average margin for all imports of the subject merchandise by applying the highest margin calculated for any responding branch of the China National Metals and Minerals Import and Export Corporation to the imports of the non-responsive firms. We determined the quantity of the imports of the non-responsive firms by comparing the quantity of manhole covers, rings and frames reported in the questionnaire responses with the quantity of manhole covers, rings and frames imported into the United States from the People's Republic of China, as recorded in the Commerce IM–146 statistics for each period of review. We weighted the margin attributed to reported and unreported sales by the quantity of sales to which the margin applies.

Therefore, we determine that the margin for the period May 1, 1987 through April 30, 1988 is 24.21 percent. We determine that the margin for the period May 1, 1988 to April 30, 1989 is 45.92 percent. These rates apply to all exports of iron construction castings from the People's Republic of China.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 45.92 percent shall be required on all shipments of iron construction castings from the People's Republic of China. These deposit requirements are effective for all shipments of Chinese iron construction castings entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1990).

Dated: January 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–1674 Filed 1–23–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–028]

Roller Chain From Japan; Partial Termination of Antidumpting Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of partial termination of antidumping duty administrative reviews.

SUMMARY: On July 19, 1986 (51 FR 24883), the Department of Commerce initiated administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The Department has now decided to terminate in part these reviews.

EFFECTIVE DATES: January 24, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Linda L. Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1986, the Department of Commerce published notices of initiation of various administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. This notice stated that we would

review entries for certain exporters during two consecutive periods from April 1, 1981 through March 31, 1983.

In the case of one respondent, Oriental Chain Manufacturing Company, Limited, both the petitioner and respondent have withdrawn their requests for review for the two periods.

Although generally a request for review must be withdrawn not later than 90 days after the date of publication of the notice of initiation of the requested review, the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. 19 CFR 353.22(a)(5). Given the acquiescence of both petitioner and respondent to the termination, and the fact that no significant work has been undertaken on the review, we deem it reasonable to extend the time limit in this case and allow withdrawal.

Accordingly, the Department has determined to terminate in part these two reviews. This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: January 18, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-1672 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-DS-M

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of annual list of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: January 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (¢/lb.)	Net [2] subsidy (¢/lb.)
Belgium	European Community (EC) Restitution Payments	46.6	46.6
Canada	Export Assistance on Certain Types of Cheese	30.3	30.3
Denmark	EC Restitution Payments	60.4	60.4
Finland	Export Subsidy	132.8	132.8
France	EC Restitution Payments	59.5	59.5
Greece	EC Restitution Payments	38.1	38.1
Ireland	EC Restitution Payments	46.6	46.6
Italy	EC Restitution Payments	73.7	73.7
Luxembourg	EC Restitution Payments	46.6	46.6
Netherlands	EC Restitution Payments	46.5	46.5
Norway	Indirect (Milk) Subsidy	20.3	20.3
	Consumer Subsidy	45.0	45.0
		65.3	65.3
Portugal	EC Restitution Payments	44.5	44.5
Spain	EC Restitution Payments	49.3	49.3
Switzerland	Deficiency Payments	113.3	113.3
U.K.	EC Restitution Payments	41.8	41.8
W. Germany	EC Restitution Payments	55.5	55.5

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 91-1671 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 14, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on industrial phosphoric acid from Israel. We have no completed that review and determine the net subsidy during the period February 5, 1987 through December 31, 1987 to be 5.96 percent *ad valorem*.

EFFECTIVE DATE: January 24, 1991.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 37926) the preliminary results of its administrative review of the countervailing duty order on industrial phosphoric acid from Israel (52 FR 31057; August 19, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered in this review are shipments of Israeli industrial phosphoric acid. During the period of review, this merchandise was classifiable under item number 416.30 of the *Tariff Schedules of the United States* (TSUS). This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item number 2809.20.00. The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period February 5, 1987 through December 31, 1987 and four programs. Negev Phosphates, Ltd. (Negev) is the only known exporter of industrial phosphoric acid (IPA) from Israel to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the petitioners, FMC Corporation and Monsanto Company, and from the Israeli producer, Negev Phosphates, Ltd. (Negev).

Comment 1: Negev argues that the Department should not have considered as countervailable a grant received by Negev under the Encouragement of Research and Development Law (ERDL). Negev contends that the grant is unrelated to IPA production because: (1) It was given for research on particular phosphate rock at a particular geographical location—Zohar; (2) it will not benefit any other locale, including the Arad plant; and (3) the research does not benefit the raw material used to produce IPA, which comes from the Arad mine.

The petitioners concur with the Department's decision to countervail the ERDL grant because the grant is indirectly related to the production of IPA. The results of such research could lead to improved methods for mining or extracting phosphate rock and be applied in the future to Arad or other locations where IPA was being produced. It is also possible that this research could make it feasible to use phosphate rock extracted at Zohar in the production of IPA.

Department's position: We disagree with Negev. The ERDL grant benefits a research project concerning the development of a process for the quarrying and beneficiation of rock phosphates. Rock phosphates are the main input in the production of IPA. Because it is possible that quarrying and beneficiation techniques learned through this research project could be used at other Negev quarry sites, including Arad, and because the results of the research are not made publicly available, the Department determines that this grant provides a countervailable benefit to IPA.

Comment 2: The petitioners argue that the Department, in calculating benefits from the Encouragement of Capital Investment Law (ECIL) grants received by Negev, should have used a long-term interest rate as the discount rate in allocating the grant benefits instead of the short-term interest rate used in the preliminary results. The petitioners state that: (1) In view of the high level of inflation in Israel, the use of a short-term rate for discount purposes substantially understates the benefit accruing to Negev from the ECIL grants; and (2) the language in the Department's proposed regulations (see proposed § 355.49(b) at 54 FR 23384, May 31, 1989) explains that when the long-term fixed-rate debt of the firm in question is not available, the average cost of long-term, fixed-rate debt in the country in question should be used. Negev argues that the Department used the correct rate for calculating the benefit from the ECIL grants because Negev had no long-term borrowing at fixed interest rates during the review period and, because of inflation, long-term, fixed rate loans were not available in Israel during the review period.

Department's position: We agree with the petitioners. We have adjusted our ECIL grant calculations by using the long-term fixed rate for industrial development loans in Israel, adjusted for inflation, from the Bank of Israel Annual Report for 1987. As a result, we determine the benefit from this program to be 2.25 percent *ad valorem*, instead of the 1.69 percent rate found in our preliminary results.

Final Results of Review

As a result of our review, we determine the net subsidy to be 5.96 percent *ad valorem* during the period February 5, 1987 through December 31, 1987.

In accordance with section 705(a)(1) of the Tariff Act, the final determination in this case was extended to coincide with the final antidumping determination on the same product from Israel. Because, pursuant to Article 5.3 of the Subsidies Code, we cannot require suspension of liquidation for more than 120 days without the issuance of a countervailing duty order, we terminated the suspension of liquidation on the subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 5, 1987. We reinstated the suspension of liquidation and required the collection of cash deposits of estimated countervailing duties for the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 19, 1987, the date of publication of the countervailing duty order.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 5.96 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after February 5, 1987 and on or before June 4, 1987. Entries or withdrawals made on or after June 5, 1987 and on or before August 18, 1987 are not subject to countervailing duties. Further, the Department will instruct the

Customs Service to assess countervailing duties of 5.96 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 19, 1987 and exported on or before December 31, 1987.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 5.96 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22

Dated: January 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-1669 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-403]

Oil Country Tubular Goods From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on oil country tubular goods from Argentina. We preliminarily determine the total bounty or grant to be 0.15 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 1.85 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimus*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 24, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1988, and November 9, 1989, the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review" (53 FR 43913 and 54 FR 47101) of the countervailing duty order on oil country tubular goods from Argentina (49 FR 46564; November 27, 1984) for the periods January 1, 1987 through December 31, 1987, and January 1, 1988 through December 31, 1988, respectively. On November 30, 1988, Lone Star Steel Company requested an administrative review covering the period January 1, 1987 through December 31, 1987. We initiated that review on January 31, 1989 (54 FR 4871). On November 22, 1989, Lone Star Steel Company requested a review for the period January 1, 1988 through December 31, 1988. We initiated that review on December 29, 1989 (54 FR 53669). The Department has now conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of Argentine oil country tubular goods. These products include finished or unfinished oil country tubular goods, which are hollow steel products of circular cross section intended for use in the drilling of oil or gas, and oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. During the review period this merchandise was classifiable under items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4230, 610.4240, 610.4310, 610.4320, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243 and 610.5244 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Such merchandise is currently classifiable under the following HTS item numbers: 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.70, 7304.20.80, 7304.39.00, 7304.51.50, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70 and 7306.90.10.

The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1987 through December 31, 1987, and January 1, 1988 through December 31, 1988, and twelve programs.

Analysis of Programs

(A) Rebate Upon Export of Indirect Taxes Paid (Reembolso)

The reembolso is a tax rebate paid upon export and is calculated as a percentage of the f.o.b. invoice price of the exported merchandise. In the final countervailing duty determination, we determined that: (1) The reembolso is intended to operate as a rebate of both indirect taxes and import duties; (2) the government conducted a study of indirect tax incidence on inputs that are physically incorporated into the exported product; and (3) the rebate scheduled are periodically revised to reflect the amount of actual duties and indirect taxes paid.

On October 16, 1986, Decree 1555/86 modified the reembolso program "to make the tax regime permanent and independent from other macroeconomic variables, responding exclusively to the concept of the refund of indirect taxes." The now decree set more precise and transparent guidelines to implement the refund of indirect taxes within the context of the new law. Rather than different rebate rates for each product or industry sector, there are now only three broad rebate levels. The rate for level I is 10 percent, level II, is 12.5 percent, and level III is 15 percent. Based on the government's 1986 calculation of the tax incidence in the seamless steel tube industry, oil country tubular goods are classified in level II and received a 12.5 percent rebate in the review period. However, the effective rate of reembolso can be less than 12.5 percent because commissions paid on export sales are

deducted from the f.o.b. value before the amount of the rebate is calculated.

The Department will determine that the reembolso does not confer a bounty or grant if the tax rebate does not exceed the total amount of allowable indirect taxes and import duties borne by inputs that are physically incorporated in the exported product, and indirect taxes levied at the final stage.

We conducted an on-site verification of the 1986 tax incidence study, and calculated the allowable tax incidence based on that study. We found that indirect taxes on physically-incorporated inputs and final stage indirect taxes on oil country tubular goods amounted to 11.90 percent during the review period. Because Siderca paid commissions on its export sales, the effective rate of reembolso did not exceed the 11.90 percent of allowable tax incidence. Therefore, we preliminarily determine that there was no overrebate of indirect taxes for the review period and, therefore, no benefit from this program during the review period.

(B) Pre-financing of Exports Under Circular RF-153

In 1987, OPRAC-1, under Circular RF-153, authorized pre-export short-term loans, to exporters of the subject merchandise for up to 70 percent of the f.o.b. value of the exported merchandise at an annual interest rate of up to one percent. The loans are denominated in australs but indexed to U.S. dollars. The funds are provided by the Central Bank of Argentina and disbursed by private commercial banks. The interest on pre-export loans is payable at the end of each calendar quarter or when principal payments are made. Because only exporters are eligible ot receive these loans, we preliminarily determine that these loans are countervailable to the extent that they are provided to exporters at preferential rates.

To calculate the benefit, we compared the amount of interest paid on each loan during the review period with the amount that would have been paid on comparable short-term commercial loans available in Argentina during the review period, adjusting for the exchange rate differentials. For 1987, we used as our benchmark the average of the monthly regulated and non-regulated 1987 interest rates published by the *Fundacion de Investigaciones Economicas Latinoamericanas* (FIEL). Since the Central Bank stopped lending money at regulated rates in October 1987, we used as our benchmark rate for 1988 the average of the monthly interest rates on short-term loans of up to 180 days published by FIEL. We allocated the benefit over the company's total exports of the subject merchandise to the United States. Since only one company exports OCTG to the United States, there was no need to weigh-average the resulting benefit. On the basis, we preliminarily determine the benefit from this program to be 0.15 percent *ad valorem* during the period January 1, 1987 through December 31, 1987, and 1.85 percent *ad valorem* during the period January 1, 1988 through December 31, 1988.

Program Determined Not to Confer a Bounty or Grant

(A) Tax Exemptions Under Laws 21.608 and 23.614

Under Laws 21.608 and 23.614, which are designed to promote job creation and industrial development, companies presenting viable investment projects are eligible to receive exemptions on certain taxes such as stamp taxes, capital taxes and income taxes. Companies are required to present a detailed project to the government, including information on technical viability, company balance sheets and cost studies, and are periodically audited to ensure compliance with the program. Siderca used this program during the review period.

We verified this program for the 1987 review period. We examined a list provided by Argentine government officials which demonstrated that over 2,400 companies, located in many regions throughout Argentina and representing a wide variety of industries, had received benefits under this program. Therefore, we preliminarily determine that tax exemptions under Laws 21.608 and 23.614 are not provided to a specific enterprise or industry, or group of enterprises or industries, and they do not confer a bounty or grant to exporters of OCTG.

Other Programs

We examined the following programs and preliminarily determine that OCTG exporters did not use them durmg the review period:

- Post-export financing under OPRAC 1-9
- Medium and long-term loans under law 22.510
- Capital grants
- Stamp tax exemption under Decree 186
- Equity infusions and capitalization
- Programa Especial de Exportaciones (PEEX)
- FIDEX
- Tax deductions under Decree 173
- Tax deductions under Decree 173
- Price premiums from Argentine government purchases of steel

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.15 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 1.85 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987, and to assess countervailing duties of 1.85 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1988 and on or before December 31, 1988.

Further, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 1.85 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal, briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Any request for disclosure under administrative protective order must be made no later than five days after the date of publication. The Department will publish and final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1)

of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-1670 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-DS-M

Argonne National Laboratory, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90-126. *Applicant:* Argonne National Laboratory, Argonne, IL 60439.

Docket Number: 90-132. *Applicant:* University of Idaho, Moscow, ID 83843. *Instrument:* Magnetic Bottle Electron Spectrometer. *Manufacturer:* Applied Laser Technology, The Netherlands. *Intended Use:* See notice at 55 FR 32676, August 10, 1990. *Reasons:* The foreign instrument provides an acceptance angle of 2 pi steradians with a 15 meV resolution at 5.0 eV for study of multiphoton ionization of polyatomic molecules. *Advice Submitted by:* National Institute of Standards and Technology, November 27, 1990.

Docket Number: 90-128. *Applicant:* Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Multipole Magnet Measurement System. *Manufacturer:* Danfysik, Denmark. *Intended Use:* See notice at 55 FR 32676, August 10, 1990. *Reasons:* The foreign instrument measures field coefficients of large multipole magnets to an accuracy better than one part per 10,000 for use in high energy physics research. *Advice Submitted by:* National Institute of Standards and Technology, November 26, 1990.

Docket Number: 90-130. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Universal Crystal Growth System, Model MCGS-5. *Manufacturer:* Crystalox, United Kingdom. *Intended Use:* See notice at 55 FR 32676, August 10, 1990. *Reasons:* The foreign instrument can operate beyond 3000 degrees Celsius in a wide range of ambient atmospheres (oxidizing, reducing, inert, or under vacuum) and employs microprocessor controlled microstepper drive motors. *Advice Submitted by:* National Institute of Standards and Technology, November 21, 1990.

The National Institute of Standards and Technology advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-1685 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Florida, et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90-157. *Applicant:* University of Florida, Gainesville, FL 32611. *Instrument:* Upgrade of Mass Spectrometer, PRISM Series II with 10-Sample Cracker. *Manufacturer:* VG Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 55 FR 41738, October 15, 1990.

Docket Number: 90-173. *Applicant:* U.S. Department of Commerce, NOAA, Woods Hole, MA 02543. *Instrument:* Water Temperature Sensor. *Manufacturer:* Scanmar A.S., Norway. *Intended Use:* See notice at 55 FR 41737, October 15, 1990.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-1666 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Minnesota, et Al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-155 *Applicant:* University of Minnesota, St. Paul, MN 55108. *Instrument:* Electron Microscope, Model JEM 1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* See notice at 55 FR 41738, October 15, 1990. *Application received by Commissioner of Customs:* August 8, 1990.

Docket Number: 90-159. *Applicant:* The Research Foundation of State University New York, Buffalo, NY 14215. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi, Japan. *Intended use:* See notice at 55 FR 41739, October 15, 1990. *Order date:* May 21, 1990.

Docket Number: 90-166. *Applicant:* University of California—Irvine, Irvine, CA 92717. *Instrument:* Electron Microscope, Model CM 201 with Accessories. *Manufacturer:* N.V. Philips Electronics, The Netherlands. *Intended use:* See notice at 55 FR 41739, October 25, 1990. *Order date:* July 5, 1990.

Docket Number: 90-168. *Applicant:* U.S. Environmental Protection Agency, Gulf Breeze, FL 32561. *Instrument:* Electron Microscope, Model EM902/PC. *Manufacturer:* Carl Zeiss, Inc., West

Germany. *Intended use:* See notice at 55 FR 41737, October 15, 1990. *Application Received by Commissioner of Customs:* August 27, 1990.

Docket Number: 90–169. *Applicant:* University of Maryland at Baltimore, Baltimore, MD 21201–1401. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi, Japan. *Intended use:* See notice at 55 FR 41737, October 15, 1990. Order date: August 27, 1990.

Docket Number: 90–171. *Applicant:* The University of Tennessee, Memphis, TN 38163. *Instrument:* Electron Microscope, Model JEM–2000 EXII/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* See notice at 55 FR 41737, October 15, 1990. *Order date:* July 12, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research of scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–1664 Filed 1–23–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting: RFMC Chairmen and Executive Directors

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Chairmen and Executive Directors of the eight Regional Fishery Management Councils (RFMCs) will hold a public meeting on February 7–9, 1991. On February 7–8 the meeting will be held at the Embassy Suites Hotel, 4400 West Cypress Street, Tampa, FL. On February 9 the meeting will be continued at the Hyatt Regency Westshore at Tampa International, 6200 Courtney Campbell Causeway, Tampa, FL. On February 7 and 8 the meeting will begin at 9 a.m., and recess at 5 p.m. On February 9 the meeting will begin at 9 a.m., and adjourn at 11:30 a.m.

The RFMC Chairmen and Executive Directors will discuss fishery management in the 1990s, including use of scientists as advisors, allocation between competing users, use of permits for data collection and enforcement, public education on management issues, interpretative rule, i.e., start of the fishery management plan review/approval period; the direction and respective roles of the National Marine Fisheries Service (NMFS) and the RFMCs; overfishing under the Guidelines for RFMC Operations and Administration (50 CFR part 602); a status report on approved Magnuson Act amendments; commitment for overfishing monitoring and stock assessment fishery evaluation (SAFE) reports; NMFS policy and experience and problems of the RFMCs with controlled access; an interjurisdictional fisheries issue (Mid-Atlantic Fishery Management Council); RFMC involvement in management of Atlantic highly migratory species, the Atlantic highly migratory species impact on existing fishery management plans, and a schedule for tuna; NMFS policy on bycatch—regional problems to be addressed relative to bycatch; the Fishery Conservation Amendments of 1990: legal and policy interpretations of its provisions, comments on Congressional intent, and a schedule for preparing intepretive rules and guidelines; budget and fiscal affairs: FY 1992 outlook, RFMC budget allocations (workload analysis), problems with grant administration, National Oceanic and Atmospheric Administration (NOAA) financial assistance policy, and RFMC staff benefits allowance; marine mammals: amendments to the Marine Mammal Protection Act (MMPA), and RFMC involvement in a regime governing incidental take; habitat protection issues; fishery/resource conservation issues before Congress; and the next RFMC Chairmen's meeting.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: January 17, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–1625 Filed 1–23–91; 8:45 am]

BILLING CODE 3510–22–M

National Fish and Seafood Promotional Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

TIME AND DATE: The meeting will convene at 9 a.m. on Monday, January 28, and adjourn approximately 12:30 p.m. on Tuesday, January 29, 1991.

PLACE: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

STATUS: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual marketing plan and budget to the Secretary of Commerce for his approval that describes the marketing and promotion activities the NFSPC intends to carry out. Funding for NFSPC activities is provided through Congressional appropriations.

Matters to be Considered

Portion Opened to the Public

January 28, 1991

9 a.m.-12 noon—Chairman's opening remarks; approval of minutes from previous meeting; review of meeting agenda and objectives; and presentation and discussion of advertising recommendations and plans for summer/spring radio and tie-in programs. 12:00 n-1:30 p.m.—Lunch. 1:30 p.m.-5 p.m.—Legislative update and discussion; Administrative Team update; and discussion of industry meetings and trade shows.

January 29, 1991

9 a.m.-12:30 p.m.—Discussion of strategy and formulation of Council recommendation for the establishment of an industry-funded marketing council; other general business.

PORTION CLOSED TO THE PUBLIC: None.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Grasso, Program Manager, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue, NW., room 620, Washington, DC 20235. Telephone: (202) 673–5237.

Dated: January 17, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-1626 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 2 to Permit No. 571, Ms. Janice M. Straley (P263A).

Pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 220.24 of the Regulations Governing Endangered Species (50 CFR parts 217-222), Scientific Research Permit No. 571 issued to Ms. Janice M. Straley, P.O. Box 273, Sitka, Alaska 99853 on November 14, 1986 (51 FR 42127), and modified on February 12, 1988 (53 FR 5030), is further modified as follows:

Revise Special Condition B.1.:

1. The research shall be conducted by the means and for the purposes set forth in the applicantion and modification nos. 1 and 2.

Revise Special Condition B.2.a., second and third sentences:

a. This notification includes the proposed location, dates and duration of scheduled field days, a list of the vessels involved in the work and the names and affiliations of all personnel who will operate under the Permit. Notification shall also be made of all subsequent additions or deletions of personnel/agents prior to any changes.

Add new Special Condition B.2.e.:

e. If a whale is accidentally entangled or struck in the course of field activities, the holder shall provide a report to the Assistant Administrator for Fisheries and the AKR Director upon return from the field trip. The report shall include a description of the events surrounding the incident and identification of steps that will reduce the potential for additional incidents. Authorization to proceed with subsequent field work of a similar nature will be at the discretion of the Assistant Administrator for Fisheries in consultation with the Director, AKR, after review of the report and the experimental protocol.

Add new Special Condition B.10.:

10. Research activities authorized to be conducted from a low cost remotely operated vehicle shall be conducted in accordance with the Policy Governing Use of Low Cost Remotely Operated Vehicles (LCROV) in Marine Mammal Research established by the NOAA Office of Undersea Research. The Permit Holder will ensure that the operation of the LCROV, including noise produced by the vehicle and the use of strobe lights, does not adversely affect the animals under observation.

All other conditions currently contained in the Permit and Modification remain in effect.

This modification is effective upon publication in the **Federal Register.**

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910; and Director, Alaska Region, National Marine Fisheries Services, NOAA, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-1577 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-22-M

Patents and Trademarks Office

Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Committee Charter Amendment.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and after consultation with GSA, it has been determined that an amendment of the charter of the Public Advisory Committee for Trademark Affairs is in the public interest in connection with the performance of duties imposed on the Department by law. The charter amendment was signed on December 3, 1990.

The charter has been amended as follows to: (1) Broaden the topics that the Committee may address to include international trademark law, (2) allow the membership of the Committee to be drawn from a wider range of the trademark community rather than solely from the regular, associate and supplementary membership of the United States Trademark Association (USTA), (3) increase the number of members on the Committee from 15 to 18, (4) provide for the direct selection of the members and appointment of the chairman of the Committee by the Assistant Secretary and Commissioner of Patents and Trademarks rather than by the Department of the USTA, and (5) set the term of membership at two years.

FOR FURTHER INFORMATION CONTACT: Lynne Beresford, Committee Control Officer, Office of the Assistant Commissioner for Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231, telephone: (703 557-7464, or Jan Jivatodi, Committee Management Analyst, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-4217.

SUPPLEMENTARY INFORMATION: The Committee was first established in September 1970, and the latest charter renewal was signed on April 4, 1990. The charter amendment was approved on December 3, 1990, and provides for the following:

(1) The amendment broadens the objectives and duties of the Committee to specifically embrace international trademark law. The previous charter permitted the Committee to advise the Patent and Trademark Office only on the steps which could be taken to increase the efficiency and effectiveness of the administration of the Trademark Act and to provide a continuing source of knowledge from the private sector to the Government. Given the increased interest within the trademark community and the Patent and Trademark Office in international trademark law, especially in the Madrid Protocol and harmonization, it is desirable that the charter refer explicitly to international trademark law.

(2) Section 5(b)(2) of the Federal Advisory Committee Act requires that the membership of advisory committees be "fairly balanced in terms of the points of view represented. * * *." The amendment furthers that goal by permitting the membership to be drawn from a wide range of the trademark community including users of the public search room, academia, members of that public at large, and the business community.

(3) The amendment increases the number of members on the Committee from 15 to 18. The increase was needed to permit additional members, from different sectors of the trademark community, to be added to the Committee without having to displace any of the current Committee members.

(4) Section 5(b)(2) of the Federal Advisory Committee Act requires that "the membership be fairly balanced in terms of the points of view represented * * *" The amendment furthers that goal by permitting the chairman to be appointed, and the members of the Committee to be selected by the

Assistant Secretary and Commissioner of Patents and Trademarks.

(5) The charter of the Public Advisory Committee for Trademark Affairs did not set terms for members. In order to promote more orderly administration of the Committee, the amendment sets the terms of the members at two years. Members will serve at the discretion of the Assistant Secretary and Commissioner of Patents and Trademarks. Appointments, when vacancies occur, shall be for the remainder of the unexpired term.

Dated: January 16, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-1651 Filed 1-23-91; 8:45 am]

BILLING CODE 3510-16-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 91-1-89SCD]

1989 Satellite Carrier Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of declaratory ruling request.

SUMMARY: Program Suppliers have asked the Tribunal to issue a declaratory ruling that copyright owners of network programs are not entitled to share in the satellite carrier copyright royalty fund. The Tribunal is soliciting comments on Program Suppliers' requested ruling.

DATES: Comments are due February 25, 1991. Reply comments are due March 11, 1991.

ADDRESSES: Parties shall file an original and five copies of their comments and reply comments to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202-673-5400).

SUPPLEMENTARY INFORMATION: In October, 1988, Congress passed the Satellite Home Viewer Act of 1988 in which it created a satellite carrier compulsory license beginning with calendar year 1989. The Tribunal was charged in that act with the responsibility of making annual distributions from the royalties collected from satellite carriers.

The first claims to satellite carrier royalties were filed with the Tribunal during July, 1990. On December 28, 1990, Program Suppliers, a group of approximately 100 producers and/or syndicators of television programs, specials and movies, filed a motion with the Tribunal seeking a ruling that copyright owners of network programs are not entitled to share in the satellite carrier royalty fees.

The specific question for which Program Suppliers request a declaratory ruling is:

> Are the copyright owners of network programs broadcast by network stations whose signals are retransmitted by satellite carriers to the public for private home viewing persons to whom TVRO royalties may be distributed within the meaning and intent of 17 U.S.C. 119?

In support of its motion, Program Suppliers contend that the satellite carrier compulsory license was intended to be modeled after the cable compulsory license where it has been established that copyright owners of network programs may not share in the royalties, and that this is supported by the fact that network signals are paid for by satellite carriers at one-fourth the rate of independent signals, the same ratio that was established in the cable license.

A copy of the Program Suppliers' request for a declaratory ruling is available upon request.

Dated: January 17, 1991.

Mario F. Aguero,

Chairman.

[FR Doc. 91-1611 Filed 1-23-91; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Long Range Planning Task Force will meet February 12, 1991 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the global environment issues in 10-20 years and its effect on Navy missions and requirements. The entire agenda of the meeting will consist of discussions on the future Naval operating environment and it's effect on Navy missions and force structure. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: Janaury 16, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91-1573 Filed 1-23-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 25, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James O'Donnell, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: January 17, 1991.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: An Analysis of Funds Issues Affecting Summer School Services under the Migrant Education Program.
Frequency: One-time.
Affected Public: State local governments.
Reporting Burden:
Responses: 32.
Burden Hours: 80.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This study will collect and analyze service and cost information concerning migrant education summer school services from a sample of state education agencies and local projects. The Department uses this information to report to Congress.

Office of Planning, Budget and Evaluation

Type of Review: Reinstatement.
Title: Prospects: The National Longitudinal Study of Chapter 1 Children.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 142049.
Burden Hours: 200766.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This Longitudinal study will collect data from children, parents and school officials involved in the Chapter I Program. This data will be used to assess the impact of significant participation in chapter I and to report to Congress.

Office of Educational Research and Improvement

Type of Review: New.
Title: Application for the Educational Partnerships Program.
Frequency: Annually.
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
Reporting Burden:
Responses: 400.
Burden Hours: 8000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This information will be used by State agencies to apply for funding under the Educational Partnership Program. The Department uses the information to make grant awards.

[FR Doc. 91-1616 Filed 1-23-91; 8:45 am]
BILLING CODE 4000-1-M

Fund for the Improvement and Reform of Schools and Teaching; Board Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES:

February 7, 1991, 9 a.m.–3:30 p.m.
February 8, 1991, 9 a.m.–12:30 p.m.

PLACE: American Federation of Teachers' 9th Floor Conference Room, 555 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Hill, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524, (202) 219–1496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board was established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). The Board was established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of FIRST on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by FIRST.

The meeting of the FIRST Board is open to the public. On February 7 and February 8, 1991, the Board will approve the minutes of the November Meeting, and evaluate the outcomes from the Family-School Partnerships and School Level Project Directors' Workshops which were held in December 1990 and January 1991. The Board will also hold a discussion on priorities and review and discuss FIRST's mission statement. A short presentation will be held on developments in education and promising initiatives, along with a briefing/orientation for new Board members. The meeting will conclude with a discussion of an upcoming agenda for and date of the next Board meeting.

The portion of the meeting on February 7, 1991, from 2 p.m. to 3:30 p.m., will be a joint meeting with the Fund for the Improvement of Postsecondary Education Board (FIPSE) to coordinate the work of FIRST with the work of FIPSE, as directed by FIRST legislation. The joint meeting will be held in room 3000, 400 Maryland Avenue, SW., Washington, DC.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524, (202) 219–1496 from the hours of 8:30 a.m. to 5 p.m.

Date: January 17, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-1631 Filed 1-23-91; 8:45 am]
BILLING CODE 4000-01-M

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: February 7, 1991 from 9 a.m. to 4 p.m. and on February 8, 1991 from 10 a.m. to 3 p.m.

ADDRESSES: Department of Education, 400 Maryland Avenue SW., Room 3000, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202 (202) 708–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, title X (20 U.S.C. 1135a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board is open to the public. The National Board will meet on Thursday, February 7, from 9 a.m. to 2 p.m. to provide an overview of the Fund's program status and special initiatives and orient new Board members. The National Board will meet from 2 p.m. to 4 p.m. with the Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board to follow up on activities from the September, 1990 meeting.

The National Board will also meet on February 8, from 10 a.m. to 3 p.m. to discuss the current budget status, special focus initiatives, the Fiscal Year 1992 Budget and Higher Education Act Reauthorization, and the Fund's program evaluation and dissemination.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, room 3100, Regional Office Building #3, 7th & D Streets SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91–1659 Filed 1–23–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3701–001 Washington]

Yakima-Tieton Irrigation District; Availability of Environmental Assessment

January 17, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Tieton Dam Hydroelectric Project, to be located at existing U.S. Bureau of Reclamation's Tieton Dam on the Tieton River in Yakima County, near Yakima, Washington, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1580 Filed 1–23–91; 8:45 am]

BILLING CODE 6717–01–M

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings

[Docket Nos. CP91–700–000, et al.]

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation, Mississippi River Transmission Corporation

[Docket Nos. CP91–700–000, CP91–701–000, CP91–702–000, CP91–703–000, CP91–704–000]

December 21, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: February 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are consolidated.

Docket number [2] (date filed)	Applicant	Shipper name	Peak day[1] average annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets
CP91–700–000 12–17–90	Columbia Gas Transmission Corporation.	USS/Kobe Steel Company.	5,500 4,400 2,007,500	WV	OH	FTS, Firm, 11–5–90	CP86–240–000, ST91–4243–000.
CP91–701–000 12–17–90	Columbia Gas Transmission Corporation.	Jessop Steel Company.	488 390 178,120	KY	PA	FTS, Firm, 11–3–90	CP86–240–000, ST91–4245–000.

Docket number [2] (date filed)	Applicant	Shipper name	Peak day[1] average annual	Points of		Start up date rate schedule	Related dockets
				Receipt	Delivery		
CP91-702-000 12-17-90	Columbia Gas Transmission Corporation.	PSI, Inc	550 440 200,750	OH	OH	FTS, Firm, 11-1-90.	CP86-240-000, ST91-4244-000.
CP91-703-000 12-17-90	Columbia Gas Transmission Corporation.	Target Energy Corporation.	500 400 182,500	KY	PA	FTS, Firm, 10-19-90.	CP86-240-000, ST91-2908-000.
CP91-704-000 12-17-90	Mississippi River Transmission Corporation.	Monsanto Co	1,030 1,030 375,950	AR, IL, LA, OK, TX	MO	ITS, Firm, 10-29-90.	CP89-1121-000, ST91-4269-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP91-941-000]

January 16, 1991.

Take notice that on January 15, 1991, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP91-941-000 and application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations (18 CFR 284.224) for a blanket certificate of public convenience and necessity authorizing the sale, transportation, or assignment of natural gas, all as more fully set forth in the application of file with the Commission and open to public inspection.

Equitable requests authority to sell, assign, and transport volumes of natural gas through its distribution facilities located in Pennsylvania and West Virginia, on a self-implementing basis, on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline to the same extent as intrastate pipelines are authorized to do so under sections 311 and 312 of the Natural Gas Policy Act of 1978. Equitable contends that in light of the fact that it functions solely as a local distribution company, the grant of the requested blanket certificate under § 284.224 of the Commissions Regulations would be appropriate for purposes of providing gas sales, assignment and transportation services under subparts C, D, and E of part 284 of the Regulations.

It is alleged that granting of a blanket certificate would provide Equitable the flexibility to provide services on a more competitive basis and to act effectively and efficiently to address market opportunities as they arise.

Equitable, states that is exempt from the Commission's jurisdiction as a local distribution company under Section 1(b) of the Natural Gas Act. By its order in Equitable Gas Company, et al., 42 FERC ¶ 61,023 (1988), reh'g denied, 43 FERC ¶ 61,085 (1988); 881 F.2d 1123 (D.C. Cir. 1989), the Commission permitted Equitable to abandon its interstate natural gas facilities and services. Pursuant to that Commission order, Equitable transferred all such facilities to Equitrans, Inc. (formerly Equitable Transmission Company) effective on April 1, 1988.

Equitable agrees to comply with the conditions set forth in § 284.224(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions, and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts, C, D, and E of part 284 of the Commission's Regulations. Equitable further agrees, consistent with the Commission's Regulations, to offer the contemplated transportation service on a non-discriminatory basis.

Equitable has requested a shortened notice period for this application. Equitable contends that as a result of such a shortened notice period, an order granting the requested certificate can be issued by the Commission early in the 1990-91 winter heating season, then Equitable can take advantage of the winter market to begin providing services authorized under section 311 of the Natural Gas Policy Act.

Comment date: January 31, 1991, in accordance with Standard Paragraph F at the end of the notice.

U-T Offshore System

[Docket Nos. CP91-843-000, CP91-844-000]

January 16, 1991.

Take notice that U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000), pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (dated filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-843-000 (1-7-91)	Pennsylvania Gas and Water Company (distributor).	50,000 50,000 18,250,000	OLA	LA	7-1-90, ITG Interruptible.	ST91-5617-000, 11-27-90

Docket No. (dated filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-844-000 (1-7-91)	Amerada Hess Corporation (producer).	250,000 50,000 18,250,000	OLA	LA	10-24-90, IT Interruptible.	ST91-5820-000, 11-30-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

4. El Paso Natural Gas Company

[Docket No. CP91-921-000]

January 16, 1991.

Take notice that on January 14, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-921-000 a prior notice request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to install and operate a new sales tap and appurtenant facilities, under its blanket certificate issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to install and operate the H & H Seed Company Sales Tap in order to permit delivery of natural gas to Southwest Gas Corporation (Southwest) for resale to the H & H Seed Company and The Peanut Patch in Yuma County, Arizona. El Paso states that by order issued March 6, 1970, at Docket No. CP70-142, the Commission, among other things, granted El Paso certificate authorization to acquire by purchase from Arizona Public Service Company (APS), predecessor-in-interest to Southwest, approximately 9.7 miles of 6⅝" O.D. pipeline connecting El Paso's Yuma Line to the Mesa Irrigation Area (hereinafter referred to as the Mesa Irrigation Area Sales Lateral) to be constructed by APS. El Paso notes it was also granted authorization to sell and deliver natural gas to APS for resale and distribution to consumers in the Yuma-Mesa irrigation area.

It is stated that El Paso is presently providing natural gas service to Southwest in accordance with the terms and conditions of the currently effective Service Agreement between El Paso and Southwest dated August 15, 1970, as amended, which was accepted for filing effective as of December 31, 1970, by Commission letter order dated January 20, 1971. It is further stated that, among other things, the Service Agreement provides for the sale and delivery by El Paso and the purchase and receipt by Southwest of natural gas for distribution and resale to consumers situated in various communities and areas in the State of Arizona.

El Paso states it received a written request from Southwest dated September 10, 1990, for natural gas service to be provided at a point on El Paso's Mesa Irrigation Area Sales Lateral in Yuma County, Arizona. El Paso is advised by Southwest that the requested quantities of natural gas would be utilized to serve the commercial and commercial space heating gas requirements of the H & H Seed Company and The Peanut Patch.

In order to accommodate Southwest's request, El Paso proposes to construct and operate one 2" O.D. tap and valve assembly, with appurtenances, at a point on El Paso's existing Mesa Irrigation Area Sales Lateral in Yuma County, Arizona (hereinafter referred to as the H & H Seed Company Sales Tap). The estimated cost of the sales tap is $8,520. El Paso states that the volumes of natural gas to be sold to Southwest at the proposed sales tap would be delivered at a pressure of not more than 155 psig. El Paso states that it has been advised that Southwest would install two 1" O.D. regulators and two 1" O.D. monitors, and one 2" O.D. rotary meter, with appurtenances, to measure requested volumes of natural gas delivered at the proposed sales tap. Southwest would also install approximately 155 feet of 2" O.D. steel pipe to deliver gas from El Paso's proposed tap to the point of distribution to the H & H Seed Company and The Peanut Patch. El Paso advises that Southwest has informed El Paso that Southwest has obtained the necessary right of way, and that no city, county, or state environmental consultations are required.

The request for authorization states that the additional quantities of natural gas to be delivered would be sold by El Paso to Southwest for resale at the H & H Company Sales Tap in order to accommodate projected Priority 1 and 2(c) requirements. It is stated that the projected Priority 1 and 2(c) load growth which precipitated Southwest's current request for natural gas service would not alter Southwest's entitlements under El Paso's Permanent Allocation Plan. Additionally, El Paso states that the sale of natural gas proposed is permitted by and consistent with the high-priority load growth provisions set forth in § 11.5(b), Growth Provisions, of the General Terms and Conditions contained in El Paso's Volume No. 1 Tariff.

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. CNG Transmission Corporation

[Docket No. CP90-1989-001]

January 16, 1991.

Take notice that on January 8, 1991, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP90-1989-001 an amendment to its application for a certificate of public convenience and necessity filed on August 14, 1990, in Docket No. CP90-1989-000, pursuant to section 7 of the Natural Gas Act, as amended, and the Commission's Rules and Regulations thereunder, requesting authorization to extend the previously proposed TL-487 pipeline an additional seven and a half (7.5) miles so that CNG's Empire Alternative proposal can begin at a point near Pendleton, New York, instead of Clarence, New York, as previously proposed, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that it is at this point that Tennessee Gas Pipeline Company (Tennessee), in an application filed December 20, 1990, in Docket No. CP90-724-000 (Niagara Alternative Project), proposes to deliver to Empire State Pipeline (Empire) up to 256,000 Mcf of transportation gas per day on a firm basis as an alternative to the western 25.5 miles of Empire's proposed 155-mile pipeline system. Tennessee's Niagara Alternative proposal utilizes the existing Niagara Falls import point on the U.S.-Canadian border, New Lewiston, New York, for the transportation of such gas through and expansion of the jointly owned Niagara Spur Loop Line, to a point to interconnection with the proposed facilities of Empire near Pendleton, New York. With this amendment, Tennessee's Niagara Alternative proposal can interconnect with CNG's proposed TL-487 pipeline

near Pendleton, New York. The level of transportation service proposed in CNG's Empire Alternative proposal—and all other proposed facilities—remain unchanged. Should the National Fuel Gas Supply Corporation Alternative in Docket No. CP90-920-000 (National Fuel Alternative) be approved, CNG would accept deliveries at Clarence, New York.

With respect to proposed facilities, this amendment extends CNG's proposed TL-487 pipeline and additional 7.5 miles (from Clarence, New York, to Pendleton, New York) to interconnect with Tennessee, thereby eliminating any need for the remaining 129.5-miles of proposed Empire Line proposed eastward of Pendleton, New York.

The only facility changes are as follows:

Install 25.2-miles (in lieu of 17.7-miles) of 24-inch pipeline (TL-487) paralleling Tennessee's existing Niagara Spur Line from Marilla, New York, to Pendleton, Erie County, New York.

The estimated cost of construction of CNG's Empire Alternative, with this amendment is now $66,782,000.

Comment date: February 6, 1991, in accordance with the first subparagraph of Standard F at the end of this notice.

6. K N Energy, Inc., et al.

[Docket Nos. CP91-924-000, CP91-925-000, CP91-926-000]

January 16, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-924-000 01-14-91	K N Energy, Inc., P.O. Box 150265, Lakewood, Co. 80215.	Maple Gas Corporation.	15,000 15,000 5,475,000	OK, TX	OK, TX	IT-1,IT-2, IT-3, Interruptible, 12-1-90.	CP89-1043-000, ST91-6193-000.
CP91-925-000 01-14-91	K N Energy, Inc., P.O. Box 150265, Lakewood, Co. 80215.	Exxon Corporation.	5,000 3,014 1,100,000	CO, KS, NE, WY	WY	IT-1, IT-2, IT-3, Interruptible, 12-13-90.	CP89-1043-000, ST91-6195-000.
CP91-926-000 01-14-91	K N Energy, Inc., P.O. Box 150265, Lakewood, Co. 80215.	IBP, Inc	4,500 4,500 1,642,500	CO, KS, NE, WY	NE	IT-1, IT-2, IT-3 Interruptible, 12-13-90.	CP89-1043-000 ST91-6195-000.

[1] Quantitites are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Panhandle Eastern Pipe Line Company, Green County Pipe Line Company, Green County Pipe Line Company

[Docket Nos. CP91-889-000, CP91-896-000, CP91-897-000]

January 16, 1991.

Take notice that on January 10, 1991, the above listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-889-000 (1-10-91)	Panhandle Eastern Pipe Line Company.	Amgas, Inc	50 25 9,125	CO, IL, KS, MI, OH, OK, TX, WY.	IL	11-7-90, PT	CP86-585-000, ST91-5491-000.
CP91-896-000 (1-10-91)	Green Canyon Pipe Line Company.	Kogas, Inc	70,000 10,000 3,650,000	Offshore LA	Offshore LA	11-16-90, IT-GC	CP89-515-000, ST91-5972-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-897-000 (1-10-91)	Green Canyon Pipe Line Company.	Citizens Gas Supply Corporation.	225,000 22,500 8,212,000	Offshore LA	Offshore LA	11-17-90, IT-GC	CP89-515-000, ST91-5971-000.

[1] Quantities are shown in Dt unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an St docket is shown, 120-day transportation service was reported in it.

8. Trunkline Gas Company

[Docket No. CP86-586-002]

January 16, 1991.

Take notice that on January 8, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP86-586-002 pursuant to section 7(c) of the Natural Gas Act a petition to amend the order of April 30, 1987, 39 FERC ¶61,100, issuing to Trunkline a blanket certificate of public convenience and necessity for certain transportation of natural gas pursuant to Order Nos. 436 and 500. Trunkline states that the amendment requested herein would authorize the assignment of capacity by Trunkline's Rate Schedule PT-Firm customers, to third parties, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Trunkline states that PT-Firm customers would be allowed to assign the firm capacity available to them on the Trunkline system to third parties, provided that such PT-Firm customers notify Trunkline in writing of such assignment. Trunkline proposes an effective date of April 1, 1991, for its transportation assignment program. Trunkline states that each PT-Firm customer would have the right on any day to assign all or any portion of its rights to tender gas for transportation under the customer's PT-Firm Service Agreement subject to the following conditions: (1) The PT-Firm customer agrees that it will comply with the general terms and conditions of Trunkline's tariff; (2) The PT-Firm customer agrees to be responsible to Trunkline for compliance with all terms and conditions of the Firm Transportation Agreement, including any imbalances between receipts of gas and deliveries of gas, and payment of all applicable rates, charges, penalties, costs, and fees for transportation service rendered pursuant to the PT-Firm customer's Firm Transportation Agreement; (3) PT-Firm customers warrant that they or their assignees will have title to all the gas delivered to Trunkline free and clear of all liens, encumbrances, and claims. PT-Firm customers agree, further that they will indemnify and hold harmless Trunkline against any loss or costs incurred by Trunkline on account of any liens, encumbrances, and claims; (4) PT-Firm customers agree to notify Trunkline when scheduling transportation service pursuant to § 6.3 of Trunkline's Rate Schedule PT-Firm of the quantity of gas which is owned by an assignee. PT-Firm customers would not be obligated to notify Trunkline of the identity of such assignee; (5) Successive assignments and reassignments may be made on a firm or interruptible basis; (6) All assignments and reassignment of firm capacity must be conducted on an open-access, nondiscriminatory basis, and for a term of no less than one month; (7) The maximum rate that may be charged for assigned or reassigned firm capacity shall be the as-billed rate charged by Trunkline to the customer. The minimum rate for such capacity shall be the commodity rate charged by Trunkline, as set forth on the effective Tariff Sheet Nos. 3-A.3 and 3-A.4; (8) The two-part as billed rate charged by Trunkline may be converted into a blended one-part rate. The blended one-part rate may be no higher than Trunkline's maximum rate for service under PT-Interruptible, and no lower than the commodity rate charged by Trunkline to the PT-Firm customer; and (9) The rate for any firm capacity repackaged on an interruptible basis must be a volumetric rate no higher than Trunkline's maximum rate for service under Rate Schedule PT-Interruptible, and no lower than Trunkline's minimum rate for such interruptible service.

Trunkline further states that any PT-Firm customer which particiates in the transportation assignment program must pay the applicable maximum rate(s) as set forth on the effective Tariff Sheet Nos. 3-A.3 and 3-A.4. To the extent a rate less than the applicable maximum rate(s) has been agreed upon, the PT-Firm customer will be required to pay Trunkline the applicable maximum rate(s) for the duration of any and all assignments made by the PT-Firm customer. The maximum rate(s) will apply to the PT-Firm customer's entire firm transportation quantity, regardless of the amount of capacity which is assigned by the PT-Firm customer. Upon termination of the assignment by the PT-Firm customer, the previously agreed-to rate will be effective on the first day of the first full month following the end of the assignment.

Trunkline states that if a PT-Firm customer is an interstate pipeline company whose customers desire to convert firm sales contract demand (CD) to firm transporation service on Trunkline's system, the interstate pipeline PT-Firm customer may assign on a permanent basis a portion of its firm transportation rights on Trunkline's system to its converting sales customers ahead of any existing queue for such capacity, provided that the sales customer enters into a firm transportation agreement with Trunkline pursuant to Rate Schedule PT-Firm with a contract quantity equal to the converted CD quantity elected on Trunkline's system, a term coexistent with PT-Firm customer's term, and receipt points limted to those contained in the PT-Firm customer's existing agreement. The interstate pipeline PT-Firm customer must enter into a new firm transportation agreement with Trunkline pursuant to Rate Schedule PT-Firm which will supersede its existing agreement for a firm transporation quantity equal to its original quantity less the assigned amount.

Comment date: February 6, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Questar Pipeline Company

[Docket No. CP91-804-000]

January 16, 1991.

Take notice that on January 4, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91-804-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to Bonneville Fuels Marketing Corporation (Bonneville) under the blanket certificate issued in Docket No. CP88-650-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with

the Commission and open to public inspection.

Questar states that pursuant to a transportation agreement dated November 30, 1990, under its Rate Schedule T-2, it intends to transport up to 10,000 MMBtu per day equivalent of natural gas for Bonneville, from various receipt points on Questar's system to various delivery points located in Utah, Wyoming, and Colorado.

Questar further states that the estimated average daily and annual quantities are 10,000 MMBtu and 3,650,000 MMBtu, respectively. Service commenced December 1, 1990, under the provisions of 18 CFR 284.223(a), as reported December 12, 1990, in Docket No. ST91-5770-000.

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP91-828-000]

January 16, 1991.

Take notice that on January 4, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-828-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Phibro Energy, Inc. (Phibro), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 309,000 MMBtu of natural gas per day for Phibro from receipt points located in Louisiana, Offshore Louisiana, Texas, Mississippi and Alabama to delivery points located in Louisiana, Texas, Florida and Mississippi. United anticipates transporting 309,000 MMBtu of natural gas on an average day and an annual volume of 112,785,000 MMBtu.

United states that the transportation of natural gas for Phibro commenced November 5, 1990, as reported in Docket No. ST91-5562-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: March 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1578 Filed 1-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-22-000]

Algonquin Gas Transmission Co., Informal Settlement Conference

January 16, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, February 5, 1991, at 10 a.m., at the offices of the Federal Enegy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208-2215 or David R. Cain (202) 208-0917.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1586 Filed 1-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT91-14-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

January 16, 1991.

Take Notice that Colorado Interstate Gas Company ("CIG") on Janaury 4, 1991, tendered for filing certain revisions to its FERC Gas Tariff, Original Volume No. 1. CIG states that the purpose of this filing is to make miscellaneous update changes to the Table of Contents and other minor changes. No substantive changes are proposed. An effective date of February 4, 1991, is requested for the revised tariff sheets.

CIG states that it has served a copy of this filing upon all holders of its Volume No. 1 tariff.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 or rule 211 (18 CFR 385.214 or 385.211) of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before January 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1589 Filed 1–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–215–000]

Commonwealth Atlantic Limited Partnership; Filing

January 16, 1991.

Take notice that Commonwealth Atlantic Limited Partnership (Commonwealth), on Junary 14, 1991, tenderd for filing Amendment No. 1 to the Power Purchase and Operating Agreement (Amendment No. 1) between itself and Virginia Electric and Power Company (Virginia Power).

Amendment No. 1 provides for the sale of an additional 70 MW of capacity and associated energy by Commonwealth to Virginia Power pursuant to a negotiated rate formula. This additional 70 MW will be provided by Commonwealth's gas-fired combustion turbine facility to be located in the City of Chesapeake, Virginia, commencing on or about March 1, 1992.

Commonwealth requests that the Commission accept Amendment No. 1 for filing at this time and determine that the formula rates set forth in Amendment No. 1 are just and reasonable. Commonwealth also requests waiver of various Commission regulations, including 18 CFR parts 34, 41, 45, 46, 50, and 141.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1581 Filed 1–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2392–000]

Georgia-Pacific Corp.; Issuance of Annual License

January 17, 1991.

On December 29, 1988, Georgia-Pacific Corporation, licensee for the Gilman Project No. 2392, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 2392 is located on the Connecticut River in Essex County, Vermont, and Coos County, New Hampshire.

The license for Project No. 2392 was issued for a period ending December 31, 1990. Section 15(a) of the Federal Power Act (FPA), 16 U.S.C. 808(a), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued or the project is otherwise disposed of as provided in section 15 of the FPA.

Notice is hereby given that an annual license for Project No. 2392 is issued to Georgia-Pacific Corporation for a period effective January 1, 1991, through December 31, 1991, or until the issuance of a new license for the project or other resolution under section 15 of the FPA, whichever comes first.

If issuance of a new license (or other resolution) does not take place on or before December 31, 1991, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as a new license is issued (or other resolution is effective), without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1579 Filed 1–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD91–02669]

HiGar Petro, Inc.; Determination on Motion Protesting Stripper Well Disqualification

January 16, 1991.

Take notice that on January 9, 1991, the United States Department of the Interior, Bureau of Land Management (BLM), 9522–H East 47th Place, Tulsa, Oklahoma, filed an affirmative notice of determination (BLM Docket No. OK–T–41–89), pursuant to § 271.805(e)(1)(i) and § 271.806(b) of the Commission's regulations under the Natural Gas Policy Act of 1978 (NGPA), on a motion filed by HiGar Petro, Inc. (HiGar) protesting the stripper well disqualification of the USA D No. 1 well. The USA D No. 1 well (API No. 15–129–10583) is located in Section 29, Township 34 South, Range 43 West, 6th PM, in Morton County, Kansas, on Federal Oil and Gas Lease KS BLM 010730.

The USA D No. 1 well originally received an affirmative NGPA Section 108 stripper well determination from the United States Department of the Interior, Minerals Management Service (MMS), in MMS Docket No. KD–0516–81 (FERC Control No. JD82–24399). Colorado Interstate Gas Company purchases the gas produced from the subject well and originally notified the applicant and the Commission, by letter dated February 6, 1989, that the well disqualified for section 108 pricing for certain periods in 1985 through 1988.

The BLM's notice of determination is available for public inspection, except for material which is confidential under § 275.206 of the regulations, at the Commission, 825 North Capitol St. NE., Washington, DC; persons objecting to the determination may file a protest, in accordance with §§ 275.203 and 275.204 of the regulations, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1588 Filed 1–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–164–000 RP90–165–000]

Mid Louisiana Gas Co., Informal Settlement Conference

January 16, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, January 30, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Jennifer B. Corwin (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 91–1587 Filed 1–23–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91-71-000]

Mississippi River Transmission Corp.; Rate Change Filing

January 16, 1991.

Take notice that on January 14, 1991, Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Tariff, Second Revised Volume No. 1:

Eleventh Revised Sheet No. 4A.2
Fifteenth Revised Sheet No. 76
Eighth Revised Sheet No. 77

MRT submitted the tariff sheets in order to reflect a new allocation of take-or-pay costs to MRT from Trunkline Gas Company (Trunkline). MRT requests an effective date of February 13, 1991. Trunkline's proposal is currently pending before the Commission in Docket No. RP91-54-000. MRT states that its tariff sheets provide for an allocation of take-or-pay costs to jurisdictional sales customers based on such customers' contract, demands as of November 1, 1988. MRT states further that the methodology reflected in MRT's tariff sheets, as filed, is identical to that proposed by MRT when it first filed the D-1 methodology in October 1988 to recover Trunkline's take-or-pay buyout and buydown costs allocated to MRT.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1582 Filed 1-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-57-001]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

January 16, 1991.

Take notice that on January 4, 1991, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance Substitute Second Revised Sheet No. 13, to be effective February 1, 1991.

Northwest states that on December 17, 1990, Northwest filed Second Revised Sheet No. 13, in the above docket, setting forth a revised facility charge applicable to Rate Schedule T-1 effective February 1, 1991, to supersede First Revised Sheet No. 13, which has a January 1, 1991 effective date. Northwest also states that subsequently, on December 31, 1990, Northwest tendered for filing First Revised Sheet No. 13 to be effective January 1, 1991, and that, therefore, it is necessary to file Substitute Second Revised Sheet No. 13 to supercede First Revised Sheet No. 13.

Northwest requests that the Commission grant any waivers it may deem necessary to permit a February 1, 1991 effective date for the tendered tariff sheet.

Northwest notes that a copy of this filing is being served on Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before January 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1584 Filed 1-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-68-001]

Penn-York Energy Corp.; Proposed Changes in FERC Gas Tariff

January 16, 1991.

Take notice that Penn-York Energy Corporation ("Penn-York"), on January 14, 1991, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective on February 1, 1991:

Substitute Original Sheets Nos. 5 through 9
Substitute Original Sheets Nos. 14 through 17
First Revised Sheets Nos. 5 through 9
First Revised Sheets Nos. 14 through 17

Penn-York states that the purpose of this filing is to reformat Penn-York's "Notice of Rate Filing" previously tendered at Docket No. RP91-68-000, so as to distinguish between Penn-York's restatement of rates and repagination of its FERC Gas Tariff. In this regard, the Substitute Original Sheets are said to reflect Penn-York's previously effective rates, terms and conditions contained within its FERC Gas Tariff, Second Revised Volume No. 1, and the First Revised Sheets are said to reflect the changes thereto proposed in Penn-York's "Notice of Rate Filing".

Penn-York states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commissions of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New York, Pennsylvania, New Jersey, and Rhode Island.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before January 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1585 Filed 1-23-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 91-4; Medical Applications

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: DOE's Office of Energy Research (ER) announces its interest in receiving applications for Special Research Grants that will support research in medical applications of lasers. The DOE is interested in establishing up to seven hospital-based, multidisciplinary Centers of Excellence for the development of new or improved medical applications of lasers. Such uses of lasers have been established for many applications including treatment of diseases of the eye, surgery, renal and gall bladder lithotripsy, treatment of

burns, gum disease and other diseases. Laser-based medical diagnostic imaging systems are commercially available. It is considered that major improvements in this field will require a multidisciplinary approach. Improvements in the instrumentation involve physics, chemistry and engineering; clinical applications involve a wide spectrum of medical specialties; and evaluation of the results requires services of pathologists, statisticians and computer programmers. Applicants for project funding, therefore, must be able to undertake broad programs leading to new or improved instrumentation and medical applications involving lasers Consortiums among hospitals and laboratories will be acceptable. Narrowly focused applications are discouraged.

DATES: To permit timely consideration for award in Fiscal Year 1991, applications submitted in response to this notice should be received by DOE, Division of Acquisition and Assistance Management by March 15, 1991.

ADDRESSES: Completed applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, Mail Stop G–236, Washington, DC 20585, attn: Program Notice 91–4.

FOR FURTHER INFORMATION CONTACT: Mr. Donald W. Cole, Office of Health and Environmental Research, ER–73, Washington, DC 20585, (301) 353–3268.

SUPPLEMENTARY INFORMATION: This notice relates to an initiative of the Medical Applications Program, Human Health and Assessments Division, Office of Health and Environmental Research. This initiative was recommended in the conference report to the fiscal year 1991 Energy and Water Development Appropriation Act. Therefore, in accordance with 10 CFR 600.7 b.1., eligibility for awards under this notice will be restricted to "hospital-based, multi-disciplinary medical University demonstration projects" as stated in the conference report. The goal of the initiative is to establish up to seven Centers of Excellence for Laser Medical Research and Applications. In selecting projects for award, DOE will assess the applicants' previous history of specific medical applications research, interdisciplinary approach to research projects, ability to convert basic science observations into new clinical practice, broad dedicated basic science expertise, multispecialty clinical expertise, teaching and training capacity, and overall management and environment. A total of $1,472,000 is available for this purpose. No individual award can exceed $750,000. Demonstration projects will be expected to concentrate on innovative applications of conventional lasers that are simpler, less expensive, more versatile, more controllable, and more widely available than the larger, more expensive, stationary devices that have limited flexibility for medical applications. Projects involving solid-state lasers (especially diode lasers) and tiny battery-operated lasers that have potential for integration into implantable and/or portable medical systems are desirable.

Funding plans should include the categories of anticipated expenditures necessary to enable the applicant to meet the objectives of the initiative, including application of the technology to clinical practice, teaching, and training, and, in particular, should include anticipated expenditures for development of new equipment and other items that will be associated with the implementation of new procedures.

Information regarding preparation and submission of applications, eligibility, limitations, evaluation and selection process, and other policies and procedures are contained in the Application and Guide for the Special Research Grant Program as well as 10 CFR part 605. The application kit and guide is available from DOE's Human Health and Assessments Division, ER–73, Office of Health and Environmental Research. Telephone requests may be made by calling (301) 353–5355 or FTS 233–5355. Instructions for preparation of an application and information on DOE research interests are included in the kit. The catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on January 15, 1991

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 91–1596 Filed 1–23–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–111–NG]

The Consumers' Gas Company Ltd.; Application for Blanket Authorization to Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 20, 1990, of an application filed by The Consumers' Gas Company Ltd. (Consumers Gas) for blanket authorization to export to Canada up to 100 Bcf of natural gas over a two-year term beginning April 1, 1991, the date on which Consumers Gas' existing export authorization (DOE/ERA Opinion and Order No. 277) expires. The applicant requests authority to export the natural gas through any point on the U.S.-Canadian border where transportation facilities currently exist. Consumers Gas states that it will submit quarterly reports detailing each export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., February 25, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: Consumers Gas is an Ontario corporation whose principal place of buisness is in Toronto, Ontario, Canada. The company is a large natural gas distribution utility in Canada, serving residential, commercial, and industrial customers primarily within the metropolitan Toronto, Ottawa, and Niagara Falls regions of Ontario.

In its application, Consumers Gas indicates that it would purchase and export natural gas on its own account for its system supply, and would not act as an export agent for other parties.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In reviewing natural gas

export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these matters as they relate to the requested export authority. The applicant asserts that the proposed export authority would be in the public interest because there is no current need for the domestic gas proposed to be exported and that the export proposal will advance U.S. goals to reduce trade barriers and to encourage the operation of market forces to achieve a more competitive and efficient distribution of goods between the United States and Canada. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Consumers Gas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 17, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-1595 Filed 1-23-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. FA89-28-000]

Electric Rates: Hearing, Accounting; System Energy Resources, Inc.; Order Establishing Hearing Procedures

Issued January 17, 1991.

On December 21, 1990, the Chief Accountant issued a contested audit report under delegated authority noting System Energy Resources, Inc.'s (System Energy) disagreement with various corrective actions recommended by the Commission's staff. The report noted System Energy's disagreement with the staff regarding Correcting Entry No. 3 on Schedule No. 2 and Compliance Exception Nos. 3 and 7 on Schedule No. 3. System Energy was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by part 41 of the Commission's Regulations. 18 CFR Part 41.

On January 9, 1991, System Energy responded that it did not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register**.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, Chapter I), a public hearing shall be held concerning the appropriateness of System Energy's practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1590 Filed 1-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 16, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 11, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed To Be Effective January 1, 1991

Sub 1st / 26th Revised Sheet No. 50.2

Proposed To Be Effective February 1, 1991

Sub Twenty-eighth Revised Sheet No. 50.2

Texas Eastern states that these sheets are being filed pursuant to section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 to flow through changes in CNG Transmission Corporation's (CNG) Rate Schedule GSS rates which underlie Texas Eastern's Rate Schedules SS-2 and SS-3.

Texas Eastern states that on December 28, 1990 Texas Eastern filed tariff sheets in Docket No. TM91-4-17-000 to track a filing made by CNG on November 30, 1990 in Docket No. TM91-4-22-000. In its November 30, 1990 filing CNG proposed revising Rate Schedule GSS rates to become effective January 1, 1991. On December 6, 1990 CNG filed a substitute tariff sheet which reflects a revised Rate Schedule GSS rate. The Commission approved CNG's December 6, 1990 filing in an order issued December 26, 1990 in Docket Nos. TM91-4-22-000, *et al.* As a result Texas Eastern hereby withdraws 1st Revised 26th Revised Sheet No. 50.2 and Twenty-eighth Revised Sheet No. 50.2 filed on December 28, 1990 and substitutes the above listed tariff sheets.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before January 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-1583 Filed 1-23-91; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Puerto Rico Ports Authority/International Shipping Agency, Inc. et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission purusuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200467.

Title: Puerto Rico Ports Authority/ International Shipping Agency, Inc. Terminal Agreement.

Parties:

Puerto Rico Ports Authority
International Shipping Agency, Inc. (ISAI).

Filing Party: Ms./ Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936-2829.

Synopsis: The Agreement provides ISAI use of berthing, warehouse, open space and related facilities for loading and discharging of vessels, temporary storage and handling of cargo, and the handling of passengers. The term of Agreement is for 3 years.

Agreement No.: 224-200468.

Title: Jacksonville Port Authority/ Marine Transportation Services Sea Barge Group, Inc. Terminal Agreement.

Parties:

Jacksonville Port Authority (JPA)
Marine Transportation Services
Sea Barge Group, Inc. (MTSSBG).

Filing Party: Carl L. Timmer, General Traffic Manager, Jacksonville Port Authority, 2831 Talleyrand Avenue, Jacksonville, FL 32206.

Synopsis: The Agreement provides for: MTSSBG's 1-year lease of 11.5 acres of JPA's Talleyrand Docks and Terminal at an annual rental of $132,250; MTSSBG to pay $28.00 per loaded container discharged/loaded across JPA's docks, the published rate for other cargoes, and $2.71 per lineal foot of barges and vessels of 0-400 feet in length; MTSSBG to pay the published tariff rate for a Kone crane and 75% of the published tariff rate for container crane; and, MTSSBG to guarantee a minimum of $350,000 in total revenues each lease year.

Dated: January 18, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-1592 Filed 1-23-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Third National Injury Control Conference: Meeting

The Center for Environmental Health and Injury Control (CEHIC) and the National Institute for Occupational Safety and Health of the Centers for Disease Control (CDC) and the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation announce the following meeting.

Name: Third National Injury Control Conference.

Time and Date: (Registration) 4 p.m.-7 p.m., April 22, 1991. 8:30 a.m.-5 p.m., April 23-24, 1991. 8:30 a.m.-12 noon, April 25, 1991.

Place: Sheraton Denver Tech Center, 4900 D.T.C. Parkway, Denver, Colorado 80237.

Status: Open to the public limited only by the space available.

Purpose: The conference will serve as a forum to clarify priorities for the development of a national agenda for injury control for the 1990s. The national agenda will shape the future of injury control research, programs, and policies for this decade. The conference will also disseminate findings in injury control research and programs, strengthen interdisciplinary knowledge, coordination, and collaboration.

Matters to be Discussed: Development of the national agenda for injury control for the 1990s by CDC will be the focus of the

conference. Seven draft papers will be presented which were developed to assess injury control in the areas of prevention of violence, prevention of unintentional injuries, prevention of motor vehicle injuries, acute care systems, acute care treatment, occupational injuries, and rehabilitation.

The conference will serve as a forum to discuss written comments received on the draft papers and to provide input into the development of the national agenda. The national agenda developed by CDC will then form the foundation for a CDC national plan for injury control.

Concurrent sessions will address the state-of-the-art in the field of injury control in the topical areas of the national agenda. Topical tables will present a wide range of topics from injury control demonstration projects, academic centers, national organizations, NHTSA, CDC, and other Federal agencies.

Contact Person for More Information: Al Miles, Chief, Program Services Section, Program Development and Implementation Branch, Division of Injury Control, CEHIC, CDC, 1600 Clifton Road, NE., Mailstop F-36, Atlanta, Georgia 30333, telephone 404/488-4662 or FTS 236-4662.

Dated: January 17, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-1603 Filed 1-23-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Technical Electronic Product Radiation Safety Standards Committee; Recharter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the rechartering of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. App. 2).

DATES: The new charter for this committee will extend to December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: January 17, 1991.

Gary J. Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-1601 Filed 1-23-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee scheduled for January 25, 1991. The meeting was announced by notice in the **Federal Register** of January 2, 1991 (56 FR 78 at 79).

FOR FURTHER INFORMATION CONTACT: Daniel W.C. Brown, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

Dated: January 18, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-1717 Filed 1-22-91; 11:01 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Meeting of the Executive Committee of the U.S. Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Administration for Children, Youth, and Families.

Times and Dates: 9 a.m., February 4, 1991 to 4 p.m., February 6, 1991.

Place: Mary E. Switzer Building, room 2110, 330 C Street, SW., Washington, DC.

Status: The meeting is open to public observation on February 4. The meeting is closed to public observation on February 5-6.

Matters to be Considered: At this meeting the Executive Committee of the U.S. Advisory Board will: in open session, review the DHHS initiative developed in response to the Board report; plan Board activities for the remainder of Fiscal Year 91; meet (at the Ritz Carlton Hotel at Pentagon City in Arlington, Virginia) with the U.S. Inter-Agency Task Force on Child Abuse and Neglect to discuss both the Board report and the Comprehensive Federal Plan developed by the Task Force; and, in closed session, review and revise a preliminary draft of the Board policy paper on the 1991 reauthorization of the Child Abuse Prevention and Treatment Act.

Contact Person for More Information: Eileen H. Lohr, Program Assistant U.S. Advisory Board on Child Abuse and Neglect, room 2070-C Switzer Building, Washington, D.C. 20201 (202) 245-6670.

Dated: January 17, 1991.

Byron D. Metrikin-Good,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 91-1629 Filed 1-23-91; 8:45 am]

BILLING CODE 4130-01-M

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9 a.m. and ends at 5 p.m. on Thursday, January 31, 1991 and begins at 9 a.m. and ends at 5 p.m. on Friday, February 1, 1991.

Place: On Thursday, January 31, Senate Special Committee on Aging Hearing, from 9 a.m.-12 noon, and from 1 p.m.-5 p.m., the Holiday Inn-Capitol, 550 C Street SW., Washington, DC. On February 1, from 9 a.m. to 5 p.m., the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC.

Status: Meeting is open to the public.

Contact Persons: Kevin W. Parks, room 4280 Wilbur Cohen Federal Building, 619-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. app. 1, sec. 10, 1976) that the Council will hold a planning meeting on January 31 & February 1 from 9 a.m.-5 p.m. and from 9 a.m.-5 p.m. respectively. The agenda will include: On January 31, the Council will attend the Senate Special Committee on Aging Hearing on the Reauthorization of the Older Americans Act as a part of their morning agenda. The Council will meet for the rest of the day at the Holiday Inn-Capitol to make decisions on their preliminary recommendations on the 1991 reauthorization and hold its general meeting to discuss its planning agenda for 1991 and beyond. On February 1, the Council will meet all day at the Holiday Inn-Capitol to continue discussions on its planning agenda and to discuss mental health and the elderly: Strategies and Next Steps.

Dated: January 14, 1991.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 91–1628 Filed 1–23–91; 8:45 am]

BILLING CODE 4130–01–M

Office of the Assistant Secretary for Health

Advisory Committee on the Food and Drug Administration; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Advisory Committee on the Food and Drug Administration (FDA) will hold a meeting on Wednesday, February 27, 1991 from 8:30 a.m. to 5:30 p.m. and Thursday, February 28, 1991 from 8:30 a.m. to 1 p.m. The meeting is open to the public and will be held in the Diplomat and Consulate Rooms of the Embassy Suites hotel located at 1250 22nd Street NW., Washington, DC. 20037. Public registration will begin one half hour prior to the beginning of the meeting on each day.

The purpose of this meeting is to conduct further review and analysis of the findings of the Committee's three subcommittees and to continue the process of outlining important cross-cutting issues for inclusion in the Committee's final report.

FOR FURTHER INFORMATION CONTACT: Beth Schwartz, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740–G Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Telephone number (202) 245–7305.

Dated: January 17, 1991.

Eric M. Katz,

Executive Secretary, Advisory Committee on the FDA.

[FR Doc. 91–1627 Filed 1–23–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–01–7122–09–8004]

Availability of the Record of Decision (ROD) on the Environmental Impact Statement (EIS) for Federal Coal Leasing in the Fence Lake Area of Catron and Cibola Counties, NM.

AGENCY: Bureau of Land Management, Las Cruces District, New Mexico.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2) (c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the ROD on leasing of Federal coal on public land and Federal mineral ownership in the Fence Lake Area of Catron and Cibola Counties, New Mexico.

EFFECTIVE DATE: The ROD was approved by the New Mexico State Director on December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Charles Hodgin, Project Coordinator, BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005, (505) 525–8228 or John Kenny, Environmental Specialist, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico (505) 988–6024.

SUPPLEMENTARY INFORMATION: The regulations set forth in title 43 part 3400 of the Code of Federal Regulations (CFR) provide the framework under which the Department of the Interior conducts leasing rights to extract Federal coal. The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental impact analysis. Additionally, the regulations are intended to ensure that coal deposits are developed in consultation, cooperation, and coordination with State and local governments, Indian Tribes, involved Federal agencies, and the general public.

The Draft (May 1990) and Final (September 1990) EIS's for the Fence Lake Project have been completed. The ROD for the Project has delineated a lease tract of 6,442.28 acres, described as follows:

Description	Acreage
T. 3 N., R. 16 W., NMPR:	
Sec. 5, Lots 3, 4, S½ NW¼	160.06
Sec. 6, Lots 1–6, S½ NE¼; SE¼ NW¼; NE¼ SW¼; N½ SE¼	463.34
T. 3 N., R. 17 W., NMPM:	
Sec. 1, Lots 1–4, S½ N½, SW¼	480.70
Sec. 3, Lots 1, 2, S½ NE¼, S½	480.96
Sec. 12, N½, SW¼, W½ SE¼	560.00
Sec. 14, N½	320.00
T. 4 N., R. 16 W., NMPR:	
Sec. 19, SE¼ NW¼	40.00
Sec. 31, Lots 1–4, E½ W½, E½	617.22
T. 4 N., R. 17 W., NMPM:	
Sec. 10, SE¼ SE¼, SE¼ SW¼	80.00
Sec. 11, S½ S½	160.00
Sec. 14, All	640.00
Sec. 15, E½, E½ W½, SW¼ NW¼, W½ SW¼	600.00
Sec. 22, All	640.00
Sec. 23, All	640.00
Sec. 24, W½ NW¼	80.00
Sec. 28, E½	320.00
Sec. 33, NE¼	160.00
Total	6,442.28

The decision to delineate the above described lease tract is based on (1) the need to provide energy mineral resources (coal) for public use, (2) the input received from the public, other Federal and State land management agencies, as well as state, local and tribal governments and (3) the environmental analysis for the alternatives considered. The delineated lease tract allows for the maximum economic recovery (MER) of the Federal coal resource and also excludes certain areas from leasing in order to protect sensitive biological resources identified in BLM's Socorro Resource Management Plan. Known public concerns were also addressed during the delineation of the lease tract. The tract delineated for lease would ensure that the Federal coal reserves, if leased and subsequently mined, are removed in an efficient, non-wasteful manner.

Copies of the ROD have been distributed to a mailing list of identified parties. Public reading copies are available at the public and university libraries in Las Cruces, Socorro, Albuquerque, Truth or Consequences, Gallup, and Grants, New Mexico, the Apache County Library in St. Johns, Arizona and the Native American Library in Window Rock, Arizona.

Copies of the ROD as well as the Draft and Final EIS's are available from the Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005, telephone (505) 525–8228.

Dated: December 5, 1990.

Larry L. Woodard,

State Director.

[FR Doc. 91–1614 Filed 1–23–91; 8:45 am]

BILLING CODE 4310–FB–M

[AK–980–01–5101–09–XLKE; AA–58353]

Draft Environmental Impact Statement for A–J Mine Project, Alaska; Availability and Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft Environmental Impact Statement and notice of public meeting.

SUMMARY: The Bureau of Land Management announces the availability of the draft environmental impact statement for the A–J Mine project, a large underground gold mine with associated surface facilities proposed on

public and private lands in southeast Alaska.

A public meeting will be held to receive comments on the draft EIS.

DATES: The draft EIS will be available to the public January 28, 1991 and BLM will receive public comment from that date until March 29, 1991.

The public meeting will be held March 12, 1991 at 7 p.m. in Centennial Hall, Juneau, Alaska.

ADDRESSES: The A–J Mine EIS is available at the following locations: Bureau of Land Management, Alaska State Office, Public Room, Federal Building, Anchorage, Alaska; Bureau of Land Management, Anchorage District, Public Room, 6881 Abbott Loop, Anchorage, Alaska; Loussac Library, 3600 Denali, Anchorage, Alaska; University of Alaska, Anchorage, 3211 Providence Drive, Anchorage, Alaska; Department of Community Development, City and Borough of Juneau, Municipal Building, 155 South Seward Street, Juneau, Alaska; Juneau Memorial Library, 292 Marine Way, Juneau, Alaska and the Noel Wien Library, 1215 Cowles, Fairbanks, Alaska.

Comments should be sent to: A–J Mine Project Manager, Bureau of Land Management, Alaska State Office (980), 222 West 7th Avenue, #30, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: David Dorris at (907) 271–4409 or toll free in Alaska at 1–800–478–1236.

SUPPLEMENTARY INFORMATION: The draft environmental impact statement evaluates the impacts of reopening the A–J mine. Issues developed from the scoping process cover the concerns of: (1) Selection of the upland tailings disposal site; (2) socioeconomic effects to the City and Borough of Juneau including population changes, electrical energy supplies, recreation and tourism; (3) water quality/quantity and effects on salmon hatchery at the mouth of Sheep Creek and (4) the duration of the project.

Ed Spang,

Alaska State Director.

[FR Doc. 91–1656 Filed 1–23–91; 8:45 am]

BILLING CODE 4310–JA–M

[CO–010–01–4320–02]

Craig District Grazing Advisory Board Meeting

Time and Date: February 28, 1991 at 10 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to public, interested persons may make oral statements between 10 a.m. and 11 a.m., or may file written statements.

Matters to be Considered

1. State Grazing Advisory Board.
2. Noxious Weed Survey.
3. Holistic Resource Management.
4. Riparian task force update.
5. Little Snake Coordinated Management Plan.
6. Status report on FY '91 range improvement projects.
7. Area reports.
8. Expenditures of Grazing Advisory Board Funds.

Contact Person for More Information: John Denker, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, phone: (303) 824–8261.

Dated: January 15, 1991.

Gary Wieser,

Acting District Manager.

[FR Doc. 91–1574 Filed 1–23–91; 8:45 am]

BILLING CODE 4310–JB–M

[UT–020–00–4212–13; U–66656]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of lands in Box Elder County, Utah.

SUMMARY: The following described public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

Description	Acres
T. 13N., R. 18W. SLM	
Sec. 6: Lots 1–14, 16	457.47
Sec. 7: NW¼NE¼	40.00
Sec. 8: NW¼SE¼	40.00
T. 14N., R. 18W. SLM	
Sec. 3, All	640.64
Sec. 4, S½	320.00
Sec. 8, E½	320.00
Sec. 9, All	640.00
Sec. 10, NE¼	160.00
Sec. 11, N½	320.00
Sec. 17, N½, N½S½, S½SW¼, SE¼SE¼	600.00
Sec. 19, All	517.12
Sec. 20, E½NE¼, NW¼, SW¼SW¼	280.00
Sec. 30, Lots 1–4, NE¼NE¼, W½E½, E½W½	397.56
Sec. 31, Lots 1–4, W½E½, E½W½	357.84
T. 13N., R. 19W., SLM	
Sec. 1, Lot 1	40.12
Total acres	5130.75

Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice will segregate the public lands as described above from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws.

Information on the exchange is available from the District Manager, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91–1600 Filed 1–23–91; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–930–01–4214–10; WYW 123025]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 40.00 acres of National Forest System land for protection of existing recreational improvements at the Cook Lake Recreation Area in the Black Hills National Forest. This withdrawal would provide protection of valuable, publicly owned improvements in the area.

DATES: Comments should be received on or before April 24, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O.Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307–775–6115.

SUPPLEMENTARY INFORMATION: On December 31, 1990, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Sixth Principal Meridian

Black Hills National Forest

T. 53 N., R. 63 W.,
sec. 10, N½NE¼SW¼, E½NW¼SW¼.

The area described contains 40.00 acres in Crook County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those uses within the statutory authorities pertinent to National Forest System land and subject to discretionary approval.

The temporary segregation of the land in connection with this withdrawal application shall not affect the administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Department of Agriculture.

Dated: January 16, 1991.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 91-1604 Filed 1-23-91; 8:45 am]

BILLING CODE 4310-22-M

INTERNATIONAL COOPERATION AND DEVELOPMENT AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the National Housing Bank of India as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in India. The National Housing Bank of India has authorized A.I.D. to request proposals for eligible investors. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

National Housing Bank of India

Project: 386-HG-003—$25,000,000

Attention: Mr. Alok Prasad, Assistant General Manager, National Housing Bank, c/o State Bank of India, 460 Park Avenue, New York, NY 10022, Telex No.: RCA 220707-SB-NY and RCA 236305-SB-NY, Telephone No.: 212/735-9600 and 212/735-9601, Telefax No.: 212/982-0208.

Attention: Mr. P.K. Handa, Deputy General Manager, National Housing Bank, Hindustan Times House (9th Floor), 18-20 Kasturba Gandhi Marg, New Delhi 110001, Telex No.: 31-66486 NHBD IN, Telephone No.: 371-5634, 371-2016, 371-2036, 371-2037, (office) 670-631 (home).

Interested investors should submit their bids to the Borrower's representative on February 6, 1991, 12 noon New York Time. Bids should be valid for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

David Grossman, Agency for International Development, APRE/H, room 401, SA-2, Washington, DC 20523-0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663-2552 (preferred communications), Telephone: 202/663-2530.

For your information the Borrower is currently considering the following terms:

(a) *Amount*: U.S. $25 million.

(b) *Term*: Up to 30 years.

(c) *Grace Period*: 10 years on repayment of principal. Repayment of principal after ten years in equal half yearly installments. Payments of interest without grace period shall be on half yearly basis.

(d) *Interest Rate*: Fixed interest rate. If rates are to be quoted based on a spread over an index, the lender should use as its index, the 8¾% U.S. Treasury Bond due August 15, 2020.

(e) *Closing Date*: As soon as practical after bid closing.

(f) *Fees*: Borrower agrees to pay all closing costs at closing from the proceeds of the loan. Lenders are requested to include all legal fees in their placement fee.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially benefically owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA-2, Washington, DC 20523-0214, telephone: 202/663-2530.

Dated: January 17, 1991

Fredrik A. Hansen,

Deputy Director, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 91-1597 Filed 1-23-91; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-311]

Certain Air Impact Wrenches; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, James M. Gould, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of George C. Summerfield, Esq. and James M. Gould, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: January 14, 1991.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 91-1634 Filed 1-23-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-314]

Certain Battery-Powered Ride-on Toy Vehicles and Components Thereof; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, T. Spence Chubb, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Daniel M. Duty, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: January 16, 1991.

Respectfully submitted,

Lynn I. Levine, Director,

Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 91-1635 Filed 1-23-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-228, (Advisory Opinion Proceeding)]

Certain Fans With Brushless DC Motors; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Daniel M. Duty, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: January 17, 1991.

Respectfully submitted,

Lynn I. Levine, Director,

Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 91-1633 Filed 1-23-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-316]

Certain Power Transmission Chains; et al.; Commission Decision to Extend the Date by Which It Must Determine Whether To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of: Certain Power Transmission Chains, Chain Assemblies, Components Thereof, and Products Containing the Same.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by twenty (20) days the deadline by which it must determine whether to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement based on an asset sale agreement between complainant Borg-Warner Automotive Co., Inc. and respondent Tesma International, Inc.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1090.

SUPPLEMENTARY INFORMATION: On December 4, 1990, all of the complainants and respondents in the investigation filed a joint motion to terminate the investigation on the basis of a settlement agreement. On December 18, 1990, the presiding ALJ issued an ID terminating the investigation on the basis of the settlement agreement. In order to allow government agencies and the public the opportunity to submit comments on the ID, the Commission has determined to extend, by twenty (20) days, the deadline by which it must determine whether to review the ID. Consequently, the Commission must determine by February 6, 1991, whether to review the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53 (19 CFR 210.53).

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. and 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: January 17, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-1632 Filed 1-23-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-303 (Sub. 7X)]

Wisconsin Central Ltd.; Abandonment Exemption in Marquette, County, MI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 11.97-mile line of railroad between milepost 170.94, near Soo Jct., and milespost 182.91, near Humboldt Jct., in Marquette County, MI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 23, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 4, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 13, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Janet H. Gilbert, Wisconsin Central Ltd., 6250 N. River Road, Suite 9000, Rosemont, IL 60018.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 29, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See, *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–1657 Filed 1–23–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 20, 1990, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08877, made application to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501) a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 25, 1991.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 15, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–1563 Filed 1–23–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 20, 1990, DuPont Pharmaceuticals, The DuPont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 25, 1991.

Dated: January 14, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–1561 Filed 1–23–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated November 19, 1990, and published in the Federal Register on December 6, 1990, (55 FR 50422), Hoffmann-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Levorphanol (9220)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 14, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–1562 Filed 1–23–91; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91–05]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Avibank MFG., Inc., an exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,963,052 entitled "Mechanical End Joint System for Connecting Structural Column Elements," which issued to the United

States of America, as represented by the Administrator of the National Aeronautics and Space Administration, on October 16, 1990, and a nonexclusive royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,340,318 entitled "Mechanical End Joint System for Structural Column Elements," which issued to the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, on July 20, 1982. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR 1245.200 *et seq.* NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation.The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to this notice must be received by March 25, 1991.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453-2430.

Dated: January 10, 1991.

Edward A. Frankle,

General Counsel.

[FR Doc. 91-1605 Filed 1-23-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administraton, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before March 11, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare record schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-90-49). Routine records relating to catalog management.

2. Central Intelligence Agency (N1-263-90-5). This CIA schedule is classified in the interests of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

3. Department of Education (N1-12-90-6). Routine facilitative records relating to the administration of Teacher Centers Program grants, 1966-77.

4. Department of the Interior, Bureau of Land Management (N1-49-90-2). Routine evaluation, inspection, and audit administrative records.

5. Department of the Interior, Bureau of Land Management (N1-49-90-3). Routine administrative management records.

6. Department of the Interior, Bureau of Land Management (N1-49-90-6). Volunteer program personnel and administrative records.

7. Department of the Interior, Bureau of Land Management (N1-49-90-9). Aircraft hazard warnings and administrative reports.

8. Department of the Interior, U.S. Geological Survey (N1-57-90-4). Hydrologic data.

9. Department of Justice, Office of the Pardon Attorney (N1-204-91-1). Reduction in retention period for pardon case files (a portion of the documentation in the files is designated for permanent retention.

10. Department of Labor, Wage and Hour Division (N1-155-90-2). Wage and Hour Management Information System and other electronic tracking and reporting systems.

11. Panama Canal Commission, Administrative Services Division (N1-185-89-3). Routine administrative management and planning records.

12. Department of the Treasury, Internal Revenue Service (N1-58-88-5). Comprehensive schedule for Office of the Assistant Commissioner (International).

13. Department of the Treasury, Internal Revenue Service (N1-58-90-3). Comprehensive schedule for Office of the Assistant Commissioner (Collection).

14. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, Division of Law Enforcement

(N1–436–90–3). Revisions to comprehensive records schedule.

Dated: January 16, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–1571 Filed 1–23–91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Division of Polar Programs; Availability of the Draft Supplemental Impact Statement for the United States Antarctic Program

AGENCY: National Science Foundation.

ACTION: Notice of availability of draft supplemental environmental impact statement for the United States Antarctic Program.

SUMMARY: We are announcing the availability of a draft supplemental environmental impact statement (SEIS) for the United States Antarctic Program. During December 1988, the Division of Polar Programs began the environmental impact statement (EIS) "scoping" process by soliciting comments from components of the U.S. Antarctic Program (USAP), Federal agencies and environmental organizations, on whether and how the 1980 Programmatic EIS for the USAP should be revised. Several commentators recommended that the 1980 Programmatic EIS be supplemented in light of changes in: (1) The logistic and scientific support conditions of the USAP; (2) knowledge about the Antarctic and its dependant ecosystems; and (3) public perceptions about environmental quality, protection, and management. We agreed with these recommendations and prepared a draft SEIS for the USAP.

DATES: Comments must be received on or before March 11, 1991, at the address below.

ADDRESSES: Requests for copies of the draft SEIS, and written comments on the draft SEIS must be mailed to Dr. Sidney Draggan, environmental Officer, Office of Safety, Environment and Health, Division of Polar Programs, National Science Foundation, 1800 G Street NW, room 620, Washington, DC 20550; or, requests for copies and written comments may be hand delivered to the same address between the hours of 9 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Sidney Draggan, at (202) 357–7766.

SUPPLEMENTARY INFORMATION:

Background

The United States Antarctic Program (USAP) is the nation's program for scientific research and national presence in Antarctica. It is funded and managed by the Federal Government. The National Science Foundation (NSF) has overall funding and management (lead agency) responsibility for USAP and U.S. activities in Antarctica. NSF conducts detailed planning of logistics, and transmittal of logistics requirements to the Naval Support Force Antarctica, to the U.S. Coast Guard (primarily provision of icebreaker services), and to a civilian support contractor. NSF guides these support units in facilities management, design, planning, engineering, construction, and maintenance. Much of this planning and guidance originates at the sites of U.S. stations in Antarctica.

The USAP currently operates three permanent year-round stations in Antarctica (McMurdo, Amundsen-Scott South Pole, and Palmer Stations). In addition, aircraft refueling facilities and field camps are established at sites on the continent and along the coast each austral summer, from late October through late January. USAP scientists may also conduct research at stations operated by other countries. The USAP uses a number of vessels for research and for supplying coastal stations. The USAP operates in an extremely harsh environment. McMurdo and the South Pole are inaccessible during the period from late February through August and early October, respectively. Although Palmer Station is accessible throughout the year, USAP winter personnel there are isolated for several months.

Issue

On November 17, 1989, an open forum for USAP participants at McMurdo Station, Antarctica, was held to "scope" issues for further consideration in the supplement to the 1980 Programmatic EIS for the USAP. On December 13, 1989, in Washington, DC, the Division hosted a Public Scoping Meeting to discuss issues that could be addressed in a supplement to the 1980 Programmatic EIS. The meetings were well attended and the Division gained valuable insights from a wide range of paticipants that included representatives of Federal agencies, environmental organizations, the scientific community, the private sector, Antarctic Treaty Parties, and interested individuals.

NSF has prepared this draft Supplemental Environmental Impact Statement (SEIS) on the USAP in accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions and provisions of the Antarctic Treaty. The draft SEIS augments the 1980 Programmatic EIS and assesses potentially significant environmental impacts of proposed program actions. As the USAP is a continuing program under unique and ever-changing climatic, scientific, logistic and international circumstances, the draft SEIS uses the 1989–1990 austral summer research season as a "snapshot" of USAP's activities. The draft SEIS was prepared in light of the NSF's Initiative for Safety, Environment and Health in Antarctica. In 1989, the NSF proposed, and subsequently received funds for, a major, multi-year Initiative to develop and implement a comprehensive approach to improving conditions associated with antarctic safety, environment and health conditions. The environmental goals of the Initiative include cleaning up residuals of past antarctic operations and bringing present antarctic operations into agreement with applicable U.S. laws and regulations; environmental provisions of the Antarctic Treaty; prevailing environmental attitudes; and, current technology as feasibly applied to the context of operations in Antarctica.

Alternatives, primarily differing in the proportion of USAP resources (in terms of personnel, equipment and funds) devoted to environmental protection, considered in the draft SEIS are:

(1) No further action beyond that applied prior to implementation of the Safety, Environment and Health (SEH) Initiative;

(2) Complete the SEH Initiative;

(3) Compelte the SEH Initiative and streamline USAP activities (the proposed alternative);

(4) Increase environmental protection measures beyond those in the SEH Initiative.

An alternative to terminate the USAP is not considered in this draft since specific Presidential Directives require maintaining an antarctic program.

Signed at Washington, DC this 18 day of January, 1991.

Sidney Draggan,

Environmental Officer, Division of Polar Programs, National Science Foundation.

[FR Doc. 91–1676 Filed 1–23–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

NRC Region I; Utility Symposium/ Workshop on Engineering's Role in Support of Nuclear Power Plant Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of symposium/workshop.

SUMMARY: The Nuclear Regulatory Commission Region I staff has scheduled an engineering symposium/workshop to promote discussion and a better understanding between the utility engineering managers and the NRC staff regarding engineering department's role in support of plant activities.

DATES: February 20–21, 1991 (Starting at 12 Noon February 20, 1991).

ADDRESSES: Sheraton Valley Forge Hotel, North Gulph Road and First Avenue, King of Prussia, Pennsylvania 19406.

FOR FURTHER INFORMATION CONTACT: Harold I. Gregg, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Telephone (215) 337–5295.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to promote open discussions through individual participation in small work groups. Each work group will discuss one of the following three topics: (1) Elements of a good engineering organization; (2) Licensee's actions with degraded conditions, including operability/reportability determinations; and (3) The modification process including 10 CFR 50.59 reviews. Each of the small working groups will identify both positive and negative aspects under the assigned discussion topic, recommend solutions to the identified problem areas and provide conclusions.

Persons other than NRC Staff and Licensee Representatives may observe the meeting, as space availability permits, and will be permitted to participate in the discussions only as time allows.

Registration will be conducted prior to the meeting.

Dated at King of Prussia, Pennsylvania, this 17 day of January, 1991.

For the Nuclear Regulatory Commission.

Jacque P. Durr,

Acting Director, Division of Reactor Safety, Region I

[FR Doc. 91–1658 Filed 1–23–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corp et al; Environmental Assessment and Finding of No Significant Impact

In the matter of GPU Nuclear Corp., Jersey Central Power and Light Co., Metropolitan Edison Co., Pennsylvania Electric Co., Three Mile Island Nuclear Station, Unit No. 1. GPU Nuclear Corp et al; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix J to 10 CFR part 50 in response to a request filed by the GPU Nuclear Corporation (the licensee), for Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from a requirement in section III.D.1(a) of appendix J to 10 CFR part 50, which requires in part that the third test in each set of three tests intended to measure the primary reactor containment overall integrated leakage rate (Type A tests) shall be conducted when the plant is shutdown for the 10-year plant in service inspections (ISI).

The proposed action is in accordance with the licensee's request for exemption dated August 30, 1990.

The Need for the Proposed Action

The proposed exemption is needed because the requirement cited above would force the licensee to perform an additional Type A integrated leak rate test (ILRT) during the forthcoming refueling outage presently scheduled to start in October 1991 within a relatively short time interval after performing the previous ILRT (during the last refueling outage) at a significant cost but without any significant increase in public health and safety.

Environmental Impacts of the Proposed Action

The proposed exemption would not affect the integrity of the plant's primary containment with respect to potential radiological releases to the environment in the event of a severe transient or an accident up to and including the design basis accident (DBA). Under the assumed conditions of the DBA, the licensee must demonstrate that the calculated offsite radiological doses at the plant's exclusion boundary and low population zone outer boundary meet the guidelines in 10 CFR part 100. Part of the licensee's demonstration is accomplished by the periodic ILRTs conducted about every 40 months to verify that the primary containment leakage rate is equal to or less than the design basis leakage rate used in its calculations demonstrating compliance with the guidelines in 10 CFR part 100.

The licensee has successfully conducted a number of these ILRTs to date. The most recent ILRT was completed in January 1990 during the last refueling outage and was the sixth Type A test since the plant started operation in 1974. The next ILRT will most probably be conducted in late 1993 assuming approval of the subject exemption. The 10-year ISI is scheduled during the forthcoming eighth refueling outage, which is presently scheduled to start in October 1991. This schedule for the 10-year ISI is in compliance with the provisions of section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a.

The proposed exemption request to decouple the schedule of the third Type A test (ILRT) from that of the 10-year ISI will not in any way compromise the leak-tight integrity of the primary containment required by appendix J to 10 CFR part 50 since the leaktightness of the containment will continue to be demonstrated by the periodic ILRTs. Additionally, the proposed exemption will not affect the existing requirement in section III.D.1(a) of appendix J that three ILRTs be performed at approximately equal 40-month intervals during each 10-year service period. Further, the proposed uncoupling does not affect the structural integrity of the structures, systems and components subject to the requirements of 10 CFR 50.55a. Accordingly, there will be no increase in either the probability or the amount of radiological release from TMI–1 in the event of a severe transient or accident. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in the expenditure of resources and increased radiation

exposures without any compensating benefit.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the TMI–1 plant, dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated August 30, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania, 17105.

Dated at Rockville, Maryland, this 16th day of January 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4 Division of Reactor Projects I/II Office of Nuclear Reactor Regulations.

[FR Doc. 91–1623 Filed 1–23–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advanced information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 19, 1990 (55 FR 52110). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1991 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

TVA Plant Licensing and Restart, January 24, 1991, Huntsville, AL—Postponed to March 5, 1991.

Defueling/Fuel Pool Storage, January 29, 1991, Bethesda, MD, 8:30 a.m.—12 Noon. The Subcommittee will discuss the proposed standard review plan for reviewing safety analysis reports for dry metallic spent fuel storage casks.

Human Factors, January 29, 1991, Bethesda, MD, 1 p.m. The Subcommittee will discuss a proposed rule on training and qualification of civilian nuclear power plant personnel.

Reliability Assurance, February 5, 1991, Bethesda, MD, 8:30 a.m.—3 p.m. The Subcommittee will discuss the reliability of safety-related solid state devices used in nuclear power plants. Portions of this meeting will be closed as necessary to discuss proprietary information.

Safety Philosophy, Technology, and Criteria, February 5, 1991, Bethesda, MD, 3 p.m. The Subcommittee will review the proposed SECY–90–405, "Formulation of a Large Release Definition and Supporting Rationale."

Joint Computers in Nuclear Power Plant Operations and Instrumentation and Control Systems, February 6, 1991, Bethesda, MD. The Subcommittees will discuss the use of computer solid-state control logic (software) in nuclear power plant operations. Portions of this meeting will be closed as necessary to discuss proprietary information.

Improved Light Water Reactors, February 12, 1991, Bethesda, MD. The Subcommittee will review the NRC staff's Draft Safety Evaluation Report corresponding to Chapters 6–13 of the EPRI–ALWR Requirements Document for the Evolutionary Designs.

TVA Plant Licensing and Restart, March 5, 1991, location of the meeting to be decided. The Subcommittee will review the planned restart of Browns Ferry, Unit 2.

Advanced Pressurized Water Reactors, March 6, 1991, Bethesda, MD. The Subcommittee will discuss the use of the NUPLEX 80+ Computerized Control System and seismic methodologies for the CE System 80+ standard plant.

Maintenance Practices and Procedures, April 10, 1991, Bethesda, MD. The Subcommittee will discuss the maintenance rule package.

Thermal Hydraulic Phenomena, Date to be determined (March, tentative), Bethesda, MD. The Subcommittee will review the status of the NRC research program to demonstrate the code scaling, assessment, and uncertainty methodology for the case of a small-break LOCA calculation on a B&W plant.

Joint Plant Operations and Probabilistic Risk Assessment, Date to be determined (March tentative), Bethesda, MD. The Subcommittees will begin review of the NRC staff's Action Plan to evaluate the risk from nuclear power plant shutdown operations.

Advanced Boiling Water Reactors, Date to be determined (March/April, tentative), Bethesda, MD. The Subcommittee will review the GE/ABWR design detail and layout.

Joint Thermal Hydraulic Phenomena and Severe Accidents, Date to be determined (April), Bethesda, MD. The Subcommittee will discuss the issue of NRC computer codes and their documentation.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (April/May, tentative), Bethesda, MD. The Subcommittees will continue their review of the issues pertaining to BWR core power stability.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," and an associated Regulatory Guide.

Severe Accidents, Date to be determined, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program.

Joint Advanced Boiling Water Reactors and Advanced Pressurized

Water Reactors, Date to be determined, Bethesda, MD. The Subcommittee will perform a comparison between the Licensing Review Basis documents for the GE/ABWR and CE/Systems 80+ designs.

Instrumentation and Control Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss EPRI's reactor set-point analysis methodology for future plants.

Improved Light Water Reactors, Date to be determined, Bethesda, MD. The Subcommittee will discuss adoption of the (N+2) concept for future plants.

ACRS Full Committee Meetings

370th ACRS Meeting, February 7–9, 1991, Bethesda, MD. Items are tentatively scheduled.

*A. *Containment Design Requirements (Open)*—The members will continue preparation of a proposed report to the NRC for incorporation of criteria to accommodate severe accidents into containment design criteria for future plants.

*B. *EPRI–ALWR Requirements Document (Open)*—Briefing by and discussion with representatives of the NRC staff on the status of their review of the EPRI–ALWR Requirements Document and on staff plans to review the EPRI "roll-up" document on requirements for evolutionary and passive nuclear power plants.

*C. *Individual Plant Examination for External Events (IPEEE) Program (Open)*—Review and comment on the NRC staff's proposed revised Supplement 4 to Generic Letter 88–20, Severe Accident Vulnerabilities Due to External Events and its supporting gudiance document, NUREG–1407. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*D. *Primary Systems Integrity (Open/Closed)*—Briefing by representatives of the NRC staff regarding test results on the stability/instability of flawed pipes. Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

*E. *Fitness for Duty Requirements for Licensed Operators (Open)*—The members will discuss proposed NRC requirements for fitness for duty for licensed operators.

*F. *Future ACRS Activities (Open)*—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

*G. *ACRS Subcommittee Activities (Open/Closed)*—Briefings and discussion regarding the status of assigned ACRS subcommittee activities. Portions of this session will be closed as necessary to discuss proprietary information and/or security information related to the matters being discussed.

*H. *ACRS Activities (Open)*—Discuss administrative issues relating to the conduct of ACRS activities including proposed revision of the ACRS Bylaws.

I. *Appointment of New Members (Closed)*—Discuss the qualifications of candidates proposed for appointment to the Committee.

*J. *Formulation of a Large Release Definition and Supporting Rationale (Open)*—Review and report on proposed formulation of a large release definition and supporting rationale, SECY–90–405.

*K. *Spent Fuel Storage (Open)*—Review and report on proposed Standard Review Plan for dry metallic spent fuel dry storage casks. Representatives of the NRC staff and the nuclear industry will participate as appropriate.

*L. *Training and Qualification of Civilian Nuclear Plant Personnel (Open)*—Review and report on proposed rulemaking regarding training and qualification of civilian nuclear power plant personnel. Representatives of the NRC staff and the nuclear industry will participate as appropriate.

*M. *Performance Indicator Program (Open)*—Briefing by representatives of the NRC staff regarding the status of the NRC Performance Indicator Program.

*N. *Implementation of Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident" (Open)*—Briefing by representatives of the NRC staff regarding the status of the implementation of Regulatory Guide 1.97 and associated problems.

*O. *Miscellaneous (Open)*—Discuss matters that were not completed during previous meetings as time and availability of information permit.

371st ACRS Meeting, March 7–9, 1991—Agenda to be announced.

372nd ACRS Meeting, April 11–13, 1991—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

27th ACNW Meeting, January 23–24, 1991, Bethesda, MD. Items are tentatively scheduled:

*A. The Committee will continue discussions on 10 CFR part 60, high-level waste repository subsystem performance requirements and their conformance with the EPA high-level waste standards.

*B. The Committee will continue deliberations concerning the NRC and EPA regulations governing the disposal of mixed waste.

*C. The Committee will finalize preparations for its presentation at the Waste Management '91 Symposium, Tucson, Arizona, on February 26, 1991.

*D. The Committee will hear a briefing on staff efforts to conform low-level waste guidance to 10 CFR part 61. The Committee intends to evaluate 10 CFR part 61 as it relates to low-level waste disposal facilities that utilize methods other than shallow land burial. Questions to be addressed include whether part 61 can be applied, in its existing form, to engineered facilities such as below and above ground vaults.

*E. The Committee will hear a trip report from two members who recently toured the Barnwell low-level waste facility.

*F. The Committee will discuss its priorities for nuclear waste reviews and report these priorities to the Commission.

*G. The Committee will discuss issues relating to human intrusion of a high-level radioactive waste disposal repository. Methods for handling this potential event in the regulatory framework will be considered.

*H. The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

ACNW Working Group Meeting on the Use of Expert Judgment in Performance Assessment, January 25, 1991, Bethesda, MD. The Working Group will discuss the following topics:

- Perspectives on the use of expert judgment in public sector decision making.
- Experience with expert opinion assessments and their aggregation in probabilistic analysis.
- Uncertainties associated with the use of expert judgment.
- Resolution of conflicts in using expert opinion.
- Use and subsequent review of such use of expert judgment in performance assessment.

28th ACNW Meeting, February 21–22, 1991, Bethesda, MD. Items are tentatively scheduled:

*A. The Committee will be briefed on a technical feasibility study on the substantially complete containment concept by the NRC staff and Center for Nuclear Waste Regulatory Analyses.

*B. The Committee will consider the results of a recent ACNW Working Group Meeting on how expert judgment will be used in conducting performance

assessments used in the licensing of a high-level waste and low-level waste repositories.

*C. The Committee will continue discussions on 10 CFR part 60, high-level waste repository subsystem performance requirements and their conformance with the EPA high-level waste standards.

*D. The Committee will be briefed by Louisiana Energy Systems on their private uranium enrichment facility plans. Topics of interest include the disposal of the depleted uranium and the licensing process for the facility.

*E. The Committee will be briefed on recent revisions to 10 CFR part 20, "Standards for Protection Against Radiation." The focus will be on changes that effect waste disposal.

*F. The Committee will discuss and possibly draft a report which comments on the stringency of the EPA high-level waste standards.

*G. The Committee will deliberate on and possible prepare a report on computational techniques for estimating collective population doses from exposures to low-levels of ionizing radiation.

*H. The Committee will deliberate on and possibly prepare a report on individual dose and risk limit criteria.

*I. The Committee will discuss and may report on Carbon-14 considerations relative to a high-level waste repository.

*J. The Committee will respond to a recent SRM concerning revising part 61 relative to attention to leaching resistance of the waste form.

*K. The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

29th ACNW Meeting, March 20–22, 1991—Agenda to be announced.

30th ACNW Meeting, April 23–24, 1991—Agenda to be announced.

Dated: January 17, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–1619 Filed 1–23–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 144 to Provisional Operating License No. DPR–16 issued to GPU Nuclear Coporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revises Technical Specification (TS) 1.12, "Refueling Outage" to specify that refueling outage tests or surveillances shall be performed at least once per 24 months. The revised Technical Specification affects surveillance tests of several systems and components.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and opportunity for Hearing in connection with this action was published in the **Federal Register** on April 9, 1990 (55 FR 13209. No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare as environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 2, 1990, and supplemented November 29, and December 21, 1990, (2) Amendment No. 144 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of item (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 10th day of January 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick, Sr.,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–1622 Filed 1–23–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Omaha Public Power District (the licensee) to withdraw its September 8, 1989 application for proposed amendment to Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

The proposed amendment would have revised the technical specifications pertaining to maximum allowable drift for the primary and secondary safety valve setpoints.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 18, 1989 (55 FR 42858). However, by letter dated January 4, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 8, 1989, and the licensee's letter dated January 4, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland this 16th day of January 1991.

For the Nuclear Regulatory Commission.

Wayne C. Walker,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–1620 Filed 1–23–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-285]

Omaha Public Power District; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Omaha Public Power District (the licensee) to withdraw its December 1, 1989, as supplemented January 12, 1990, application for proposed amendment to Facility Operating License No. DPR-40 for the Fort Calhoun Station, Unit No 1, located in Washington County, Nebraska.

The proposed amendment would have revised typographical and administrative corrections to the technical specifications.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on March 7, 1990 (55 FR 8228). However, by letter dated December 1, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 1, 1990, as supplemented January 12, 1990, and the licensee's letter dated December 14, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska, 68102.

Dated at Rockville, Maryland this 16th day of January 1991.

For the Nuclear Regulatory Commission.

Wayne C. Walker,

Project Manager, Project Directorate IV-1, Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-1621 Filed 1-23-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28786; File No. SR-Amex-90-31]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Stop and Limit Orders in Certain Equity Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rules 131 and 154 to allow stop and stop limit orders in certain equity securities to be elected by a quotation as follows:

(Additions are italicized; deletions are bracketed).

Rule 131. Types of Orders

(a)—(t) No change.

Commentary

.01 See Rule 154 and Commentary thereto for provisions regarding the election of stop and stop limit orders by quotation in certain securities.

Rule 154. Orders Left with Specialist

No member [, member firm] or member [corporation] *organization* shall place with a specialist, acting as broker, any order to effect on the Exchange any transaction except at the market or at a limited price.

. . . Commentary

.01-.03. No change.

.04 *(a)* A specialist shall accept both stop orders and stop limit orders in securities in which he is so registered.

(b) When a specialist elects a stop order on his book by selling stock to the existing bid or buying stock at the existing offer for his own account, he must first obtain a Floor Official's approval, and all stop orders so elected must be executed at the same price as his electing transaction.

(c) Stop and stop limit orders to buy or sell a security (other than an option, which is covered by rule 950(f) and Commentary thereto) the price of which is derivatively based upon another security or index securities, may, with the prior approval of a Floor Official, be elected by a quotation as set forth below:

(i) A stop order to buy becomes a market order when the bid price in the security is at or above the stop price after the order is represented in the Trading Crowd;

(ii) A stop order to sell becomes a market order when the offer price in the security is at or below the stop price after the order is represented in the Trading Crowd;

(iii) A stop limit order to buy becomes a limit order executable at the limit price or at a better price, if obtainable, when the bid price in the security is at or above the stop price after the order is represented in the Trading Crowd; and

(iv) A stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when the offer price in the security is at or below the stop price after the order is represented in the Trading Crowd.

(v) This paragraph (c), regarding election of stop and stop limit orders by quotation, shall apply only to such derivative securities as are designated from time to time by the Exchange as eligible for such treatment.

.05-.15 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange currently lists and is in the process of developing a number of equity products which trade under the equity trading rules, but are derivative of or based upon the value of another security. The price of each of these products is based largely on, and should fluctuate with, the price of the security on which it is based. The Americus Trust Units, PRIMEs, and SCOREs are examples of this type of derivative equity product.[1] The Exchange's use of

[1] The Amex Rules provide listing standards for certain unit investment trusts which permit investors to separate their securities holdings into distinct trading components representing discrete interests in the income and capital appreciation potential of the securities deposited in the trust. See Amex Company Guide, sections 118 and 1005. The Amex currently lists a 30 trust series of a unit investment trust by the Americus Shareowner Service Corporation, which are known as "Americus Trusts." Units of each Americus Trust series may be divided by their holder into two components: PRIMEs and SCOREs. The PRIME component carries, among other things, the dividend

Continued

the equity trading rules for these derivative products has proven generally satisfactory; however, some difficulty has been encountered in the handling of stop and stop limit orders in Americus Trust securities, especially if trading becomes relatively inactive in the Americus Trust security or the underlying security becomes unusually volatile.

Currently, Exchange Rules provide that a stop order becomes a market order when a transaction in the security occurs at a price equal to or better than the stop price, and a stop limit order becomes a limit order executable at the limit price or at a better price when a transaction in a security occurs at a price equal to or better than the stop price.[2] Therefore, it is only when a transaction in the security occurs at the appropriate price that the stop or stop limit order is deemed elected and the order is executed or becomes executable.

The purpose of stop and stop limit orders is to allow an investor to minimize losses or maximize profits on market movements. This method of price protection can be used for other trading strategies as well. However, as noted above, stop and stop limit orders have been less effective when used in connection with Americus Trust Units, PRIMEs and SCOREs. The quoted market in such securities can increase or decrease substantially based upon movement in the underlying security, even though there has been no transaction in the derivative equity security. When this happens, the quoted market for the derivative equity security can go through the stop or stop limit price without the order being elected.

Therefore, in order to alleviate this problem, the Exchange proposes that a rule similar to that used in options trading (see Exchange rule 950(f) Commentary .02) [3] be adopted for use with certain derivative equity securities. The proposed amendments to rules 131 and 154 would allow stop and stop limit orders to be elected by a quotation in the derivative equity security in addition to their being elected by a transaction in that security. Thus, a stop or stop limit order in an Americus Trust Unit, for example, would become a market or limit order, respectively, when the quoted market for the Unit reaches the appropriate stop or stop limit price. Consistent with the options rule, the proposed amendments also require that a specialist receive the approval of a Floor Official before electing stop or stop limit orders by a quotation in these derivative equity securities.

The Exchange proposes to allow stop and stop limit orders to be elected by a quotation in the Americus Trust Units, PRIMEs and SCOREs. Theoretically, similar problems could arise with respect to other derivative securities traded under equity trading rules, such as index warrants or the upcoming SuperUnits.[4] Accordingly, the Exchange proposes to retain the flexibility to determine when to allow stop and stop limit orders to be elected by the quote in other derivative equity securities, the price of which is based upon and should fluctuate with the price of another security or index of securities.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-31 and should be submitted by February 14, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 16, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1641 Filed 1-23-91; 8:45 am]

BILLING CODE 8010-01-M

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and voting rights in the underlying common stock. The SCORE component carries the right to capital appreciation over a specified price. *See* Securities Exchange Act Release No. 21863 (March 18, 1985), 50 FR 11972 (March 26, 1985) (File No. SR-Amex-84-35).

[2] See Amex Rules 131(q) and (r).

[3] Amex Rule 950(f), Commentary .02 states that stop and stop limit orders in option contracts shall be elected by a quotation as follows: A stop order to buy becomes a market order when the bid price in the options series is at or above the stop price, after the order is represented in the Trading Crowd. A stop order to sell becomes a market order when the offer price in the option series is at or below the stop price, after the order is represented in the Trading Crowd. A stop limit order to buy becomes a limit order executable at the limit price or at a better price, if obtainable, when the bid price in the option series is at or above the top price, after the order is represented in the Trading Crowd. A stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when the offer price in the options series is at or below the stop price, after the order is represented in the Trading Crowd. No stop order or stop limit order elected by a quotation may be executed without prior approval of a Floor Official.

[4] See Securities Exchange Act Rel. No. 28095 (June 6, 1990), 55 FR 24016 (June 13, 1990) (publication for notice and comment of Amex's proposal to trade SuperUnits on the Exchange, File No. SR-Amex-90-6). File No. SR-Amex-90-6 was amended by Amendment No. 1, see Securities Exchange Act Rel. No. 28410 (September 6, 1990), 55 FR 37783 (September 13, 1990) (Amendment No. 1 to File No. SR-Amex-90-6).

[Rel. No. 34-28783; File No. SR-PSE-90-31]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendments to Arbitration Procedures and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),

15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the PSE's arbitration procedures and fees as set out in Exchange rule 12, *Arbitration*. The specific sections affected are as follows: rule 12.2, *Simplified Arbitration for Public Customers*; Rule 12.8, *Designation of Number of Arbitrators*; rule 12.31(d), *Joining and Consolidation*; rule 12.18, *Adjournments*; rule 12.29, *Awards*; rule 12.31, *Schedule of Fees for Public Customers*; and rule 12.32, *Schedule of Fees for Industry and Clearing Controversies*.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes are based, for the most part, on proposals developed by the Securities Industry Conference on Arbitration ("SICA"),[3] and conform to arbitration rules currently in place at the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD").[4] In general, the changes are designed:

—To codify the Exchange's practice of appointing a public arbitrator for simplified claims and to preside at pre-hearing conferences (unless the customer requests a majority of industry arbitrators) (rule 12.2);

—To permit the use of one arbitrator for claims under $30,000 (rule 12.8);

—To clarify the rules regarding joinder and consolidation (rule 12.13(d));

—To discourage adjournments and thereby promote the efficiency and equity of the arbitration process (rule 12.18);

—To provide arbitrators with the express authority to award interest, and the discretion to set the rate of interest, and to provide that awards must be paid within thirty (30) days of receipt (rule 12.29); and

—To revise the schedule of fees so that Claimants would be required to file a non-refundable filing fee in addition to a hearing session deposit (rule 12.31).

More specifically, the PSE proposes that under rule 12.8, Designation of Number of Arbitrators, one arbitrator may preside in a case involving a public customer where the amount in controversy does not exceed $30,000, unless a party or the arbitrator requests three (3) arbitrators.[5] This proposed amendment retains the parties' ability to choose three arbitrators and also will provide that the single arbitrator will be a public arbitrator, knowledgeable in, but not from, the securities industry. The purpose of this amendment is to reduce administrative and hearing costs.

Rule 12.13(d), *Joining and Consolidation*, sets forth the elements required for joinder and consolidation of arbitration claims. Specifically, rule 12.13(d), as proposed, provides that all persons may join in one action as Claimants (or may be joined in one action as Respondents) if they assert any right for relief (or any right is asserted against them) jointly, severally or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to these Claimants (Respondents) will arise in the action. Further, proposed rule 12.13(d) clarifies that the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Moreover, any further determinations with respect to joinder or consolidation may be made by the arbitration panel and shall be deemed final.

Rule 12.18, *Adjournments*, proposes that the fee for an initial adjournment requested after the arbitrators have been appointed would be increased from $100 to an amount equal to the hearing session deposit. The fee for second and subsequent adjournment requests by the same party would be twice the hearing session deposit, but could not exceed $1,000. The arbitrators would be granted the authority to dismiss a case without prejudice upon the request for a third adjournment consented to by all parties. The amendment is based on a proposal endorsed by SICA. The proposed rule is expected to reduce delays by discouraging frivolous requests for adjournments in the arbitration process and to encourage more efficient use of the process by the parties to the arbitration. Adjournments are the single most significant cause of delays in resolving disputes and result in the lengthening of the overall processing time for arbitration cases. Adjournments waste arbitrator time and Exchange resources. The Exchange intends to use part of the adjournment fees to compensate arbitrators.

Rule 12.29, *Awards*, proposes the addition of subsections (g) and (h). Proposed subsection (g) is intended to encourage prompt payment of awards, and to increase confidence in the arbitration process by providing that arbitrators can award interest which will accrue from the date the award is rendered, while Subsection (h) will provide that awards must be paid within 30 days. At present, there is not express time limit on payment of awards.

Finally, rule 12.31, *Schedule of Fees*, proposes to combine rule 12.31, *Schedule of Fees for Customer Disputes*, and rule 12.32, *Schedule of Fees for Industry/Clearing Controversies*, since these rules, except for the amounts of the fees, are virtually identical. Proposed rule 12.31 provides a revised framework, described below, for the assessment of fees. All claimants, whether public customers or industry, would be required to file a non-refundable filing fee in addition to a hearing session deposit. Both fees would be related to the amount of the claim and could be ascertained according to

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[1] The PSE has requested that the Commission approve the proposal on an accelerated basis. See File No. SR-PSE-90-31.

[2] For the exact language of the proposed rule change see Exhibit A to File No. SR-PSE-90-31; letter from Rosemary A. MacGuinness, Senior Counsel, PSE to Laurie Petrell, Staff Attorney, SEC, dated November 27, 1990; and letters from Beth A. Fruechtenicht, Arbitration Administrator, PSE to Laurie Petrell, Staff Attorney, SEC, dated December 4, 1990 and January 3, 1991.

[3] SICA, formed in 1977, developed the Uniform Code of Arbitration ("Uniform Code") which subsequently has been adopted by all of the SROs that maintain arbitration forums.

[4] See, generally, NYSE Rules 600-637 and the *NASD Manual* paragraphs 3712, *et. seq.* The current arbitration rules and procedures in place at the NYSE and NASD recently were amended. See note 6, and accompanying text, *infra*.

[5] See Part III, section 19(a) of the NASD's Code of Arbitration Procedure, *NASD Manual* paragraph 3719.

the revised schedule. The new framework is based on a proposal approved by SICA in the form of a uniform SICA rule. The proposed rule change utilizes the same revised admininistrative framework set forth in the SICA uniform rule. The proposed schedule of fees is based on the schedules recently filed by the NASD and NYSE, and approved by the Commission.[6] While there may be some minor variations in language between the PSE's filing and the filings of the NASD and NYSE, these variations are not substantive, and do not affect the PSE's intent to make its filing conform to the NASD and NYSE rules.

Non-Refundable Filing Fees

The revised framework sets out one schedule of non-refundable filing fees. The schedule ranges on a sliding scale from $15 for claims under $1,000, to $300 for claims over $5 million. This schedule corresponds favorably to the $300 filing fee charged in all securities arbitrations conducted by the American Arbitration Association ("AAA").[7] The filing fees are analogous to court filing fees, and are intended to offset some of the Exchange's costs of administration even when cases settle prior to the hearing.

Hearing Session Deposit

The revised framework sets out three schedules of hearing session deposits. The claimant will file one hearing session deposit, according to the applicable schedule. The amount of the hearing session deposit will depend on whether the matter is to be determined on the documents alone (the first schedule), or whether one or three arbitrators will be appointed for an oral hearing (second and third schedule). "Documents alone" cases include Simplified Arbitration cases where a hearing is not requested by the Claimant, and the Regular Arbitration cases where a hearing is waived by all parties in writing. A single arbitrator may preside at a pre-hearing conference, at a Simplified Arbitration where the Claimant requests a hearing, and at hearings involving claims up to $30,000, where none of the parties has requested the appointment of a three person panel. Three arbitrators generally preside at all hearings involving claims over $30,000.

The hearing session deposit is intended to relate to the hearing costs, and not the administrative costs related to the processing of the cases. By requiring filing fees in addition to the hearing session deposits, the proposed schedule of fees allocates the costs of arbitration more equitably among users of the forum.

The revised schedule would also clarify that the amount of the forum fees per hearing session shall be based on the hearing session deposit, not on the filing fee.

The proposed rule change is consistent with sections 6(b) (4) and (5) of the Act in that it provides for the equitable allocation of reasonable fees among its members and issuers and other persons using its facilities, and it promotes just and equitable principles of trade by insuring that member and member organizations and the public have an impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-90-31 and should be submitted by February 14, 1991.

IV. Commission's Discussion and Conclusion

The Commission was instrumental in promoting the formation of SICA in 1977 and, since that time, has maintained a strong and continual interest in the arbitration rules and procedures in place at the various SROs, including the PSE. The Commission has been supportive of SICA's most recent proposals to amend the Uniform Code, and has encouraged SROs to adopt these amendments into their rules. The Commission has considered carefully the PSE's proposed rule change generally to adopt SICA's recent proposals and to conform substantially to the arbitration rules and procedures currently in place at the NYSE and NASD and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the Commission finds, for the reasons set forth below, that the proposal is consistent with section 6 of the Act.[8]

The Commission agrees with the Exchange that the proposal is consistent with the section 6(b) (4) and (5) requirements that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities, and that the Exchange's rules be designed to promote just and equitable principles of trade. In this regard, the Commission believes that the proposed rule change should improve the speed and efficiency of arbitration, while at the same time maintaining the traditional qualities of arbitration.

The Commission has determined that the proposed amendments to rule 12.2 which codify the Exchange's practice of appointing a public arbitrator to decide customer claims under ten thousand dollars and to preside over pre-hearing conferences should increase customer confidence with regard to the fairness of the administration of the arbitration process for cases involving small claims.

Further, the Commission believes that Proposed Rule 12.8, which allows one arbitrator to preside in a case involving a public customer where the amount in controversy is less than $30,000, unless a party or the arbitrator requests three arbitrators, is consistent with the Act. As noted by the Exchange, this proposed amendment will reduce administrative and hearing costs, making the arbitration process more efficient. Moreover, the public customer will retain the ability to request a panel

[6] See Securities Exchange Act Rel. No. 28421 (September 10, 1990), 55 FR 38181 (order approving File No. SR-NYSE-90-19); and Securities Exchange Act Rel. No. 28086 (June 1, 1990), 55 FR 23493 (order approving File No. SR-NASD-90-03).

[7] The AAA, a non-profit organization, is an independent, alternative arbitration forum.

[8] 15 U.S.C. 78f (1988).

of three arbitrators. For those cases, therefore, where more than one arbitrator is unnecessary, this proposed amendment will reduce additional, superfluous costs.

The Commission also has concluded that proposed rule 12.13, which sets forth the requirements for joinder and consolidation, establishes sufficiently clear standards for the Director of Arbitration to determine preliminarily, and for the arbitration panel to make a final determination, whether related claims should proceed in the same or a separate proceeding.

Additionally, the Commission believes that the proposed amendments to rule 12.18 which will increase the fee for initial and subsequent adjournments provides for an equitable fee allocation that will better enable the PSE to recover the costs allocated with the empanelment of the arbitrators following repeated adjournments, as well as a means to defray the arbitrators' compensation.

The Commission agrees with the Exchange that the proposed amendment to rule 12.29 should encourage prompt payment of awards and increase confidence in the arbitration process. The Commission believes that it is appropriate to amend this rule to provide arbitrators with the express authority to award interest and with the discretion to determine the rate of interest in order to more fully compensate parties for economic damages incurred by claimants. Similarly, the Commission believes that the rule's provision that awards will bear interest from the date of award and the additional requirement that awards be paid within thirty (30) days of receipt should help to ensure that arbitration awards are promptly paid.

Finally, the Commission believes that the general restructuring of the Exchange's schedule of fees provides for the equitable allocation of reasonable fees among Exchange members and other persons using its facilities. As stated above, the proposed amendment to rule 12.31 requires that all claimants file a non-refundable filing fee in addition to a hearing session deposit, provides for a forum fee for a pre-hearing conference with an arbitrator, and sets forth the requisite hearing session deposit and forum fees for claims that are filed separately and subsequently joined or consolidated. The Commission believes that the proposed, explicit fee structure should promote certainty regarding the fees for pre-hearing conferences through its published fees. Likewise, the Commission believes that the proposed amendment to rule 12.31 requiring parties to member controversies to pay a filing fee provides for an equitable schedule of fee assessments against Exchange members. In summary, the Commission has determined that the proposed amendments to rule 12.31 and the related deletion or rule 12.32 equitably allocate reasonably apportioned fees among users of the PSE's arbitration forum in proportion to the costs associated with the respective parties to the controversy.

For the reasons discussed above, therefore, the Commission finds that the proposed rule change is consistent with sections 6(b) (4) and (5) under the Act. The Commission believes that these rules, as amended, provide for the equitable allocation of reasonable fees among Exchange members and other persons using its facilities, and will aid in the just and equitable resolution of disputes between investors and broker-dealers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. As previously stated, the Commission recently approved substantially similar proposed rule changes submitted by the NASD and NYSE to amend their respective arbitration rules and procedures in order to comply with SICA's recent amendments to the Uniform Code.[9] The Commission did not receive any comments on those proposals.

Further, the Uniform Code was developed in order to help provide consistency between the arbitration procedures in place at the various SROs. The Uniform Code is intended to provide guidelines for arbitration procedures that will be beneficial to both the customer and broker-dealer by being fast, fair, and efficient. The Commission believes, therefore, that accelerated approval of the PSE's proposal is appropriate because the approved amendments will help to establish an immediate uniformity among the arbitration rules in place at the NYSE, NASD and PSE, a result which will help further the objectives of the Uniform Code.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[9] See note 6, *supra.*

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1989).

Dated: January 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1639 Filed 1-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28782; File No. SR-NYSE-90-57]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Proposed Increase in the Trade Comparison Fee for Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to institute, as of January 1, 1991, a rate increase affecting the trade comparison fee for options payable by members for all options transactions, whether they be Index or Equity, agency or principal.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose—The purpose of the proposed rule change is to help defray

[1] The NYSE proposes to raise the current monthly trade comparison fee for options from $.0125 per contract side to $.04 per contract-side.

the cost to the Exchange for rendering trade comparison of options transactions by charging members the increased fee. The increased fee will apply to all options transactions, whether they are Index or Equity, agency or principal. Although expenses to the Exchange for providing this service have increased, the fee has not been raised since January 1, 1986.

Basis—The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of dues, fees, and other charges among Exchange members and issuers and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–90–57 and should be submitted by February 14, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1640 Filed 1–23–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28789; File No. SR–PTC–90–07]

January 16, 1991.

Self-Regulatory Organizations; Participants Trust Company; Order Temporarily Approving a Proposed Rule Change Relating to the Elimination of Prorated Charges to Participants for Principal and Interest Advances

I. Introduction

On October 23, 1990, the Participants Trust Company ("PTC") filed a proposed rule change (File No. SR–PTC–90–07) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed was published in the Federal Register on December 3, 1990, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal on a temporary basis until April 15, 1991.

II. Description of the Proposal

The proposal deletes section 2(f) of Article III, Rule 2 of the rules of PTC, which section provides generally for the proration among benefitted PTC participants of the cost of financing principal and interest ("P&I") advances.

One of the services PTC provides as a clearing agency for mortage-backed securities ("Securities") is the collection and distribution of P&I due to members listed as registered owners of Securities on its books. Typically, PTC collects P&I from issuers and paying agents on the payment date ("Payment Date"), which falls on the 15th day of each month. PTC then credits the appropriate PTC participants' accounts on its distribution date ("Distribution Date"), which generally falls on the 16th day of each month, or "P+1."

To the extent that any P&I payments are not received or made available to PTC by Distribution Date, [3] PTC will advance P&I to participants on Distribution Date by using: (1) Its own funds; (2) the cash portion of participants' mandatory deposits into the Participants Fund; or (3) borrowed funds. With respect to any funds borrowed in connection with a P&I payment, PTC currently will charge benefitted participants pro rata for any costs it incurs in connection with financing P&I advances.

PTC proposes to eliminate proration charges associated with P&I borrowing. Instead of prorating such cost, PTC will use interest income earned from investing P&I overnight, from Payment Date to Distribution Date, and cover any remaining shortfall from PTC's operating income. PTC has indicated that financing costs for P&I advances may be covered in large part by interest income generated from P&I receipts.

III. Discussion

Under PTC's current procedures, PTC charges participants who receive P&I advances pro rata for PTC's external borrowing costs, while at the same time earning interest income by investing P&I received prior to Distribution Date. In effect, PTC is duplicating revenue associated with its P&I payment service by not offsetting borrowing costs with earned interest income. As proposed , PTC intends to eliminate this inefficiency by applying P&I interest income towards the cost of financing P&I and eliminating the existing pro rata charge to participants for such cost. PTC's proposed rule change would provide for a more equitable allocation of the cost of financing P&I advances and thus the Commission preliminarily believes that the proposal is consistent with section 17A(b)(3)(D) of the Act,[4] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

The Commission is concerned that PTC retains sufficient funds and credit

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 28647 (November 26, 1990), 55 FR 49961.

[3] PTC cites that the major reason for borrowing is that some paying agents make funds available on a next day basis (*e.g.*, checks or drafts that must be presented to a bank for payment). When PTC is unable to present the check or draft for payment on Payment Date, PTC borrows the difference between funds available and the total P&I payment.

[4] 15 U.S.C. 78q–1(b)(3)(D).

sources to adequately meet its payment obligations. The Commission understands that currently the proportion of interest earned on P&I receipts to the cost of financing for P&I advances is approximately 2:1 on an annualized basis.[5] The Commission is particularly concerned about the possible erosion of operating income and credit sources in the event interest earned on P&I receipts does not meet the cost of financing P&I advances. The Commission understands that the amount of financing needed to pay P&I advances significantly increases when the Payment Date falls on a holiday or a weekend.

PTC has filed a companion rule change, SR–PTC–90–09, which it believes will reduce external borrowing when the Payment Date falls on a holiday or a weekend.[6] Because of the Commission's concern that interest earned on P&I receipts cover the cost of financing, the Commission believes it is prudent to review SR–PTC–90–09 prior to approving this proposal permanently. In addition, the Commission has requested that PTC monitor, on a monthly basis, the amount of funds borrowed for P&I advances, the cost of financing P&I advances, and the amount of interest earned on the investment of P&I receipts.[7]

IV. Conclusion

For the reasons stated above, the Commission preliminarily finds that PTC's proposal is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that PTC's proposed rule change (SR–PTC–90–07) be, and hereby is, temporarily approved until April 15, 1991.

[5] This ratio was represented to the Commission by PTC during a January 15, 1991, telephone conversation between Leopold Rassnick, PTC counsel, and Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission

[6] Under that proposal, when a Payment Date falls on a weekend or a holiday, PTC would be allowed to distribute all P&I collected and available in Distribution Date but will allow PTC to delay the distribution of any remaining P&I payments until P+2. On P+2, PTC will distribute any additional funds that are made available and borrow the remainder. In this way, PTC believes there will exist a greater probability that borrowing costs will be covered adequately through interest income. *See* Securities Exchange Act Release No. 28744 (January 7, 1991), 56 FR 1427.

[7] This proposal is not intended to have any effect on the Commission's directive in PTC's temporary registration order that requires PTC to modify its P&I collection and payment procedures to allow for voluntary instead of mandatory advances of P&I. *See* Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1645 Filed 1–23–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28775; File No. SR–PHLX–90–39]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Parity and Priority Rules Applicable to Foreign Currency Options Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 26, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to rule 19b–4 of the Act, proposes to revise its parity and priority rules applicable to foreign currency options orders. The text of the proposed rule change is attached as *Exhibit 1.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 31, 1990, the PHLX filed with the Commission a proposed rule change, SR–PHLX–90–21 ("90–21 Filing"), to amend the Exchange's parity and priority rules applicable to foreign currency options orders. The Exchange believes that the salient policy bases of the 90–21 Filing were:

(1) Providing customers' orders of under 100 contracts time-priority at all times over all other orders regardless of account type (except specialists) and regardless of whether the competing order of an Registered Options Trader ("ROT") or member firm is "opening" or "closing."

(2) Treating all orders of 100 contracts or more on an equal basis so as to give floor traders the assurance that once they voice a size bid or offer they can not be superseded by a similar quote from any other market participant which, in turn, should induce floor traders to make larger and tighter markets.

(3) Assuring that any bid or offer of 100 contracts or more that has established priority will be guaranteed that at least the greater of 10% of its size or 100 contracts must trade in the series before anyone else with an order the size of 100 contracts or greater can gain parity. The Exchange believes that this will induce floor traders and off-floor professional traders to make larger and tighter markets.

(4) Inducing traders to make tighter quotes also will attract smaller orders, particularly if priority must be yielded by orders of 100 contracts or more to smaller-sized customer orders, regardless of whether the larger-sized orders are opening or closing.

The PHLX hereby withdraws its 90–21 Filing and submits a revised proposal to amend the parity and priority rules applicable to foreign currency options orders. The PHLX believes this proposal incorporates the policy objectives of its 90–21 Filing, but the Exchange has revised the specific language of the proposed rule in order to assure its consistency with section 11(a) of the Act. Specifically, among other things, the revised FHLX proposal requires that any bid/offer for the account of a PHLX member which relies on the exemption under section 11(a)(1)(G) of the Act must yield time priority to any bid/offer for the account of a customer.

The Exchange believes that the proposed rule change is consistent with sections 11(a) and 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, will promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commsision will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 14, 1991.

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1

Paragraph (h) constitutes all new text.

RULE 1014 Time priority of Bids/Offers in Foreign Currency Options

RULE 1014 (a)

—(g) no change

—(h) Options on Foreign Currences

Bids/Offers in foreign currency options, regardless of account type (i.e., ROT, member, customer) or size of bid/offer, or whether opening or closing, are all treated the same for purposes of determining time priority pursuant to Rule 119, except that:

(i) All bids/offers of customers accounts for under 100 contracts have time priority over all other bids/offers; and

(ii) Any bid/offer for the account of a member which relies on the exemption under section 11(a)(1)(G) of the Securities Exchange Act of 1934 must yield time priority to any bid/offer for the account of a customer.

Once a bid/offer has established priority, no bid/offer may gain parity at that price during that trade session until at least 10% of the size of the previous bid/offer or 100 contracts, whichever is greater, subsequently trades in that series. Priority is retained if the 10% or 100 contract threshold is not reached regardless of subsequent better bids/offers then return to the level of the bid/offer with priority, provided that the person with priority did not relinquish his standing by withdrawing his bid/offer or leaving the crowd. If bids/offers on parity have priority over other subsequently voiced bids/offers in the crowd, the 10% or 100 contract threshold shall be calculated on the basis of the combined sizes of the bids/offers in parity.

For purposes of paragraph (h), account types are defined as follows: an ROT account is a market functions account as defined in § 220.12 of Regulation T of the Board of Governors of the Federal Reserve Board; member account is any account of a non-market making member/participant or an associated person of such a member/participant or for which such a member/participant or any of its associated persons maintains discretionary control; and customer accounts are all accounts other than ROT, member or specialist accounts. Yielding requirements of this rule are not applicable to specialist accounts.

[FR Doc. 91-1637 Filed 1-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28788; File No. SR-NASD-90-67]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Schedule H of the By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 30, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to Schedule H of the Association's By-Laws [1] to eliminate the current reporting thresholds of $10,000 and 50,000 shares, so that the reporting requirements of Schedule H will apply to each non-NASDAQ security traded by members. The proposed amendments also clarify which transactions in NASDAQ and listed securities are required to be reported pursuant to Schedule H.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Schedule H of the NASD's By-Laws, which became effective on August 1, 1989,[2] requires reporting of price and volume information for principal transactions in all "non-NASDAQ" securities if certain conditions are met. "Non-NASDAQ security" is defined in subsection 1(a) of Schedule H to mean "any equity security that is neither included in the National Association of Securities Dealers Automated Quotations System nor traded on any national securities exchange."

Since the adoption of Schedule H, it has become apparent that substantial trading is being effected in the over-the-counter ("OTC") market in certain NASDAQ and regional exchange listed securities that are not encompassed in the regulatory reporting requirements for non-NASDAQ Over-the-Counter ("NNOTC") securities as defined under Schedule H. These trades in NASDAQ and listed stocks being effected in the OTC market are also not required to be reported pursuant to Schedules D or G of the NASD By-Laws, for NASDAQ

[1] *NASD Securities Dealers Manual* CCH ¶ 1932.

[2] See Securities Exchange Act Rel. No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988), approving SR-NASD-87-55.

securities or listed securities, respectively.

The proposed change would expand the definition of "non-NASDAQ security" to apply to OTC transactions in securities listed on a regional exchange which do not meet primary exchange listing requirements. Reports on these transactions are not required to be made pursuant to Schedule G of the NASD By-Laws.[3]

The proposed change would also expand the definition of "non-NASDAQ security" to apply to OTC trades in NASDAQ securities by a person not registered as a NASDAQ market maker in such securities. Transaction reports on these securities are currently not required under the daily reporting requirements of section 5(a) of Part VI of Schedule D to the NASD By-Laws.

The NASD believes the inclusion of these trades under the reporting requirements of Schedule H will allow the NASD to monitor trading and detect abuses respecting OTC transactions in such securities.

Additionally, the NASD is proposing to eliminate the thresholds for calculating what is required to be reported. Currently, Schedule H requires members to aggregate daily purchases and sales of non-NASDAQ securities and report certain trading data to the NASD if the aggregated numbers exceed thresholds of $10,000 or 50,000 shares. This is often a cumbersome process for members to follow for each security in order to determine whether trading in the stock has broken the threshold for the day. Also, the NASD cannot gather complete trading information for regulatory purposes if low levels of trading activity need not be reported.

To remedy both situations, the NASD is proposing to remove the existing price and volume thresholds. Removal of these thresholds will simplify calculations and reporting procedures for members active in non-NASDAQ stocks, and will also provide the Market Surveillance Department with a more complete record of non-NASDAQ trading activity for regulatory purposes.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." The NASD believes that the proposed amendments to Schedule H are consistent with the Act in that regulatory information submitted to the NASD will be more complete.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 16, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1638 Filed 1-23-91; 8:45 am]

BILLING CODE 8010-01-M

[3] Schedule G only requires reporting of OTC transactions in securities listed on the NYSE or the AMEX, and securities listed on regional exchanges which meet the original NYSE or AMEX listing requirements. *NASD Securities Dealers Manual*, CCH ¶ 1917.

[File No. 81-847]

Application and Opportunity for Hearing: Carlisle Plastics, Inc. and Poly-Tech, Inc.

January 17, 1991.

Notice is hereby given that Carlisle Plastics, Inc. and Poly-Tech, Inc. have filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exemption Poly-Tech, Inc. from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than February 12, 1991 may submit to the Commission in writing the person's views or any substantial facts bearing on the application or the desirability of a hearing theron. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which the person desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1575 Filed 1-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 17952; International Series Rel. No. 221; 812-7642]

The Chase Manhattan Bank, N.A.; Application

January 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Chase Manhattan Bank, N.A.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of section 17(f) thereof.

SUMMARY OF APPLICATION: The Chase Manhattan Bank, N.A. ("Chase") seeks an order exempting any investment company registered under the 1940 Act other than an investment company registered under section 7(d) of the 1940 Act ("Company"), Chase, and Chase Bank AG ("Chase AG") from the provisions of section 17(f) of the 1940 Act so as to permit Chase, as the custodian of the securities and other assets of a Company ("Securities"), or as subcustodian of the Securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit, or to cause or permit the deposit of, the Securities in Chase AG in Germany in accordance with the arrangement described below.

FILING DATE: The application was filed on November 27, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 12, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1 Chase Manhattan Plaza, New York, New York 10081.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representatives

1. On November 20, 1981, the SEC granted an order (Investment Company Act Release No. 12053) exempting Chase, any subcustodian of Chase, any custodian for which Chase acts as subcustodian, and any Company from the provisions of section 17(f) of the 1940 Act and rule 17f-4 thereunder to the extent necessary to permit Chase, as the custodian of Securities or as the subcustodian of Securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit or to cause or permit the deposit of the Securities in foreign banks and foreign securities depositories under cetain conditions. On October 9, 1984, the SEC amended the order (Investment Company Act Rel. No. 14184) so that it would conform to certain conditions in rule 17f-5 which was adopted by the SEC on September 7, 1984 (Investment Company Act Rel. No. 14132). The order also was amended when the SEC made subsequent changes to rule 17f-5. The order, as amended, is referred to herein as the "Existing Order."

2. Chase AG is a wholly owned indirect subsidiary of Chase that was organized on September 5, 1977. Chase AG conducts corporate and institutional banking and is regulated as a banking institution by Bundesaufsichtsamt fuer das kreditwesen.

3. The Existing Order requires that a foreign subsidiary of Chase must have shareholders' equity in excess of $100,000,000 to be an eligible foreign custodian. As of December 31, 1989, the shareholders' equity of Chase AG was $129,000,000 (at the then current rate of exchange). As of the date of the application, Chase anticipated that a capital reduction would, before December 31, 1990, reduce the shareholders' equity of Chase AG to approximately $102,000,000. Because of normal currency fluctuations, shareholders' equity may, from time to time, fall below the Existing Order's minimum required amount of $100,000,000, and Chase AG could become ineligible as a foreign custodian under the Existing Order.

4. Chase requests that the SEC grant an order permitting Chase to deposit Securities in Germany with Chase AG so long as the deposit is made in accordance with an agreement, which agreement would be required to remain in effect at all times during which Chase AG does not meet the requirements of the Existing Order relating to shareholders' equity, among (a) The Company or a custodian of the Securities of the Company for which Chase acts subcustodian, (b) Chase, and (c) Chase AG pursuant to the terms of which Chase would act as the custodian or subcustodian, as the case may be, of the Securities of the Company. Chase AG would be delegated such duties and obligations of Chase thereunder as would be necessary to permit Chase AG to hold in custody the Securities of the Company in Germany, provided that such delegation would not relieve Chase of any responsibility to the Company for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of Chase AG) for which neither Chase nor Chase AG would be liable under the Existing Order (*e.g.*, despite the exercise of reasonable care, loss due to Acts of God, nuclear incident, and the like).

5. Chase's Existing Order requires that the custody agreements between Chase and any Company will provide that Chase will indemnify and hold a Company whose Securities are held pursuant thereto harmless from and against any loss which shall occur as the result of the failure of a foreign custodian holding the Securities to exercise reasonable care with respect to the safekeeping of the Securities to the same extent that Chase would be required to indemnify and hold the Company harmless if Chase itself were holding the Securities in New York. The indemnity provides financial support to contractural responsibility in addition to that afforded by the shareholders' equity of a foreign bank. The agreements of Chase with respect to Chase AG will afford protection significantly beyond such indemnification. As set forth in Chase's Existing Order, the Bankers Blanket Bond which Chase currently maintains provides standard fidelity and non-negligent loss coverage with respect to securities which may be held in the offices of Chase's subsidiary banks and the offices of non-affiliated foreign banks which may be utilized as subcustodians by Chase. Chase intends to maintain such coverage so long as it is available at reasonable cost.

6. Under the Existing Order, Chase must warrant to each Company that the established procedures to be followed

by each foreign bank holding the Company's Securities, in the opinion of Chase after due inquiry by it, afford protection for the Company's Securities at least equal to that afforded by Chase's established procedures with respect to similar securities held by Chase in New York. Chase, in selecting a subcustodian under the Existing Order, takes into consideration the financial strength of the subcustodian, its general reputation and standing in the country in which it is located, its ability to provide efficiently the custodial services required and the relative costs for the services to be rendered by it.

7. Chase has taken the foregoing factors into consideration in its selection of Chase AG to act as subcustodian. Chase believes that Chase AG has adequate financial resources to meet its contractural responsibilities as subcustodian of Chase and that it enjoys an excellent reputation in Germany. Chase submits that, as shown by the protections that are provided by the Existing Order and the other qualifications of Chase AG, the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Condition

The order requested in the application is conditioned on Chase's compliance with all other terms of the Existing Order, except those relating to shareholders' equity.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1642 Filed 1-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17949; 811-4329]

Eagle Diversified Holdings, Inc.; Application

January 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Eagle Diversified Holdings, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on August 7, 1990, and an amendment to the application was filed on December 20, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 15, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, registered under the Act as an open-end diversified investment company on September 19, 1985. Applicant has never made a public offering of its securities. Applicant's shares were privately placed in the United States so as to take advantage of the favorable tax treatment afforded certain prospective securityholders under a tax treaty between the United States and the Federal Republic of Germany.

2. At a meeting held on December 6, 1989, Applicant's Board of Directors unanimously approved a plan of liquidation and dissolution (the "Plan"). Applicant's securityholders approved the Plan at a special meeting held December 29, 1989. As of November 30, 1989, Applicant had 5,398,990 shares of common stock outstanding. At that date, the net asset value per share of the Applicant was $9.66, and its total assets amounted to $52,132,165.

3. On January 3, 1990, Applicant distributed substantially all of its assets to its securityholders. Approximately $85,000 was reserved for the payment of expenses. The expenses incurred have exceeded the amount set aside for the payment of expenses. Such excess expenses have been and will be borne by the Applicant's investment adviser, Merrill Lynch Asset Management, Inc. Organizational expenses for the Applicant were fully amortized prior to liquidation.

4. As of December 19, 1990, Applicant had no securityholders to whom distributions in complete liquidation of their interests had not been made. As of the same date, Applicant had liabilities outstanding amounting to $29,846, consisting primarily of legal expenses in connection with its liquidation and dissolution. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs. Applicant intends to file Articles of Dissolution with the State of Maryland to terminate its existence as a Maryland corporation as soon as practicable.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1643 Filed 1-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17948; 811-4628]

Falcon Diversified Holdings, Inc.; Notice of Application

January 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Falcon Diversified Holdings, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on August 7, 1990, and an amendment to the application was filed on December 20, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm. on February 15, 1991, and should be

accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC'S Public Reference Branch.

APPLICANT'S REPRESENTATIONS:

1. Applicant, a Maryland corporation, registered as an open-end diversified management investment company under the Act on March 31, 1986. Applicant has never made a public offering of its securities. Applicant's shares were privately placed in the United States so as to take advantage of the favorable tax treatment afforded certain prospective securityholders under a tax treaty between the United States and the Federal Republic of Germany.

2. At a meeting held on December 6, 1989, Applicant's board of directors approved a plan of liquidation and dissolution (the "Plan"). On December 29, 1989, Applicant's securityholders approved the Plan. As of November 30, 1989, Applicant had 7,900,000 shares of common stock outstanding. At that date, the net asset value per share of the Applicant was $9.60, and its total assets amounted to $75,847,153.

3. On January 3, 1990, Applicant distributed all of its assets to its securityholders. Approximately $81,000 was reserved for payment of expenses. The expenses incurred have exceeded the amount set for the payment of expenses. Such excess expenses have been and will be borne by the Applicant's investment adviser, Merrill Lynch Asset Management, Inc. Organizational expenses for the Applicant were fully amortized prior to liquidation.

4. As of December 19, 1990, Applicant had no securityholders to whom distribution in complete liquidation of their interests had not been made. As of the same date, Applicant had liabilities outstanding amounting to $26,286, consisting primarily of legal expenses in connection with its liquidation and dissolution. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs. Applicant intends to file Articles of Dissolution with the State of Maryland to terminate its existence as a Maryland corporation as soon as practicable.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1648 Filed 1–23–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17953; File No. 812–7627]

The Mutual Life Insurance Company of New York, et al.

January 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Mutual Life Insurance Company of New York ("MONY"), MONY Variable Account A (the "Variable Account"), and MONY Securities Corp. ("MSC").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2) of the Act.

SUMMARY OF THE APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Variable Account pursuant to certain variable annuity contracts.

FILING DATE: The application was filed on November 9, 1990 and amended on January 10, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 11, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicants, c/o The Mutual Life Insurance Company of New York, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney, (202) 272–3045, or Nancy M. Rappa, Senior Attorney, (202) 272–2622, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. MONY is a mutual life insurance company organized under the laws of New York. The Variable Account, a registered separate investment account of MONY, was established to support individual flexible payment variable annuity contracts (the "MONY Contracts"). MSC, a registered broker-dealer, is the principal underwriter for the MONY Contracts. The MONY Contracts are substantially similar to contracts (the "Legacy Contracts") offered by MONY Legacy Life Insurance Company ("MONY Legacy"), a stock life insurance company wholly owned by MONY. The MONY Legacy Variable Account A (the "Legacy Variable Account"), a registered separate investment account of MONY Legacy, was established to support the Legacy Contracts. The MONY Contracts and the Legacy Contracts are collectively referred to herein as the "Contracts."

2. An Agreement and Plan of Merger has been entered into between MONY and MONY Legacy pursuant to which MONY Legacy will be merged into MONY (the "Merger") upon receipt of all necessary consents and approvals of, permits and exemptions from, and assurances of no objection to the proposed Merger from the appropriate governmental authorities. When the Merger becomes effective, MONY will become the depositor of, and will become obligated under, the Legacy Contracts, and all the assets, reserves, and other liabilities allocated to the Legacy Variable Account will become the assets, reserves, and other liabilities of the Variable Account.

3. The Variable Account consists of eleven subaccounts, each of which will invest in a corresponding portfolio of the MONY Series Fund, Inc. or the Quest for Value Accumulation Trust (the "Funds"). The Funds are registered as

open-end diversified management investment companies under the Act.

4. The Contracts are designed for use in retirement plans that may or may not qualify for special federal tax treatment. There are currently two forms of the Contracts. Contract I was withdrawn from sale on September 1, 1988. However, additional purchase payments may be made under Contract I which, on and after the date of the Merger, will be allocated among six subaccounts. Contract II offers two versions that differ only in the subaccount available to the contractholder. The two versions of Contract II will be actively sold by MONY on and after the effective date of the Merger, with purchase payments made under newly sold Contract II, as well as additional payments under those contracts sold prior to the Merger, being allocated among the subaccounts available to holders of Contract II.

5. MONY imposes for all Contracts a daily charge equivalent to an annual rate of 1.25% of the net assets of the Variable Account to compensate it for bearing certain mortality and expense risks. Of the 1.25% charge, .80% is for assuming mortality risks and .45% is for assuming expense risks. The mortality risk assumed is that annuitants may live for a longer time than projected and that an aggregate amount of annuity benefits greater than that projected will accordingly be payable. The expense risk assumed is that expenses incurred in issuing and administering the Contracts will exceed the administrative charges provided in the Contracts.

6. In addition to the deduction of a mortality and expense risk charge, MONY will deduct an annual contract fee from the cash value to reimburse it for administrative expenses relating to maintenance of the Contracts. The annual contract fee currently is $30, but the charge will never exceed $50. Currently no deduction is made for premium or similar taxes; however, MONY has reserved the right to do so with respect to future payments. In addition, under Contract I, a transfer charge of $15 (not to exceed $25) will be imposed for each transfer in excess of 4 transfers per contract year. Under Contract II, no transfer charge is currently imposed but MONY has reserved the right to impose a transfer charge not exceeding $25.00 for each transfer.

7. Under Contract I, a contingent deferred sales charge ("surrender charge") will be deducted. The surrender charge will not exceed 5% of total purchase payments made in the contract year of the surrender and during the five preceding contract years. After the first contract year (if no prior partial surrenders have been made during that contract year), up to 10% of the cash value may be withdrawn without surrender charge. An amount equivalent to any net purchase payments made prior to the contract year of the surrender and the five preceding contract years may be surrendered without surrender charge. Under Contract II, if no prior partial surrenders have beenmade during the contract year, up to 10% of the cash value may be withdrawn without surrender charge. The surrender charge will not exceed 7% of total purchase payments, and it declines to 0% for purchase payments made prior to the contract year of surrender and the preceding seven full contract years. No surrender charges will be imposed if the surrender is a ful surrender and (i) the Annuitant is age 59 ½ or older, (ii) the Contract has been in force for 10 contract years, and (iii) purchase payments have been made in at least 7 of the 10 contract years immediately preceding the surrender. In addition, no surrender, charge is imposed if Contract II is surrendered after the third contract year and the surrender proceeds are paid under certain settlement options.

8. Applicants state that the mortality and expense risk charge under the Contracts has been designed to reasonably compensate MONY for the assumption of mortality risks. If the mortality assumptions used should prove to be insufficient to cover the actual cost of the mortality risks undertaken, MONY will absorb the resulting loss by transferring funds from its general corporate surplus to the appropriate subaccounts of the Variable Account. Conversely, if the mortality assumptions used should prove to be more than sufficient, the resulting excess will be retained by MONY.

9. Applicants represent that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon MONY's annalysis of publicly available information about similar industry products, taking into consideration current charge levels, the manner in which charges are imposed, the existence of charge level guarantees or guaranteed annuity rates, and the markets in which the Contracts will be offered. MONY will maintain at its office, available to the SEC, a memorandum setting forth in detail the products analyzed in the course, and the methodology and results, of its comparative survey.

10. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts. Should the actual amounts derived from the surrender charge prove insufficient to cover actual expenses, the deficiency will be covered from MONY's general corporate funds, including proceeds from the mortality and expense risk charge.

11. Applicants have concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and the contractholders. The basis for such conclusion is set forth in a memorandum which will be maintained by MONY at its office and will be available to the SEC.

12. Applicants also represent that the assets of the Variable Account will only be invested in management investment companies that undertake, in the event a plan under Rule 12b–1 to finance distribution expenses is adopted, to have such plan formulated and approved by the company's board of directors or trustees, a majority of whom are not interested persons of the company.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1647 Filed 1–23–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17954; 812–7458]

NCC Funds, et al.; Application

January 17, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the Act").

APPLICANTS: NCC Funds (the "Fund"), National City Bank ("National City"), BancOhio National Bank ("BancOhio"), First National Bank of Louisville ("First National"), and McDonald & Company Securities, Inc. ("McDonald").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATIONS: Applicants seek a conditional order to permit certain series of the Fund to issue and sell two classes of securities that would be identical in all respects except for differences related to shareholder services plan expenses, transfer agency expenses, exchange privileges, and voting rights.

FILING DATE: The application was filed on January 9, 1990, and amended and restated on April 19, 1990, July 17, 1990, and October 17, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 11, 1991 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: NCC Funds, Suite 2100, 800 Superior Avenue, Cleveland, Ohio 44114; National City Bank, Attention: Trust Planning and Control Department, 635 National City Bank Building, 629 Euclid Avenue, Cleveland, OH 44114; BancOhio National Bank, 155 East Broad Street, Columbus, OH 43251; First National Bank of Louisville, First National Tower, 101 S. 5th Street, Louisville, KY 40202; McDonald & Company Securities, Inc., 2100 Central National Bank Building, Cleveland, OH 44114.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

APPLICANT'S REPRESENTATIONS:

1. The Fund is registered under the Act as an open-end management investment company. At present, the Fund offers interests in ten different investment portfolios: the Money Market Portfolio, Money Market Portfolio (Trust), Government Portfolio, Government Portfolio (Trust), Treasury Portfolio (Trust), Tax Exempt Portfolio, Tax Exempt Portfolio (Trust), Equity Portfolio, Fixed Income Portfolio, and Ohio Tax Exempt Portfolio. The application requests exemptive relief with respect to the Money Market Portfolio, Government Portfolio, Treasury Portfolio, Tax Exempt Portfolio, Equity Portfolio, Fixed Income Portfolio, and Ohio Tax Exempt Portfolio and to all investment portfolios that may be organized by the Fund in the future (the "Portfolios").

2. National City, BancOhio, and First National are the investment advisers to the various Portfolios. National City and BancOhio are wholly-owned subsidiaries of, and First National is an affiliate of, National City Corporation, a bank holding company organized under the laws of Delaware.

3. Each Portfolio consists of two classes of shares, "Retail Shares" and "Institutional Shares" (collectively, "Shares"). At present, the Retail Shares and Institutional Shares in each Portfolio are identical except for the class designations, applicability of the sales load, and exchange privileges.

4. Shares are sold on a continuous basis by the Fund's distributor, McDonald, an Ohio corporation registered as a broker/dealer with the SEC. Institutional Shares are sold primarily to banks and trust companies affiliated with National City Corporation that are acting on behalf of their respective customers. Institutional Shares are sold at net asset value per share without the imposition of a sales load. Retail Shares are sold to the public through financial institutions such as banks, brokers, or dealers. Retail Shares are sold at their net asset value per share plus a front-end sales load of up to 3.75% of the offering price.

5. Retail Shares of a Portfolio are exchangeable only for the Retail Shares of another portfolio. No exchange privilege is available to or contemplated for the Institutional Shares.

6. All expenses of each Portfolio are currently borne pro rata by each outstanding Portfolio share. Portfolio expenses consist of advisory, administration, custodial, and transfer agency fees, as well as other types of operating expenses. Under the Fund's distribution agreement and related plan of distribution adopted under rule 12b–1, each Portfolio reimburses McDonald monthly for the direct and indirect expenses incurred by McDonald in providing the Portfolio with advertising, marketing, prospectus printing, and other distribution services, up to a maximum of .10% per annum of the average net assets of the Portfolio. The Fund also pays McDonald an annual distribution fee of $100,000 payable monthly and accrued daily in equal proportions by all of the Fund's investment portfolios with respect to which McDonald is distributing shares.

7. As a result of increased competition for the assets of public investors, the Fund would like to tailor certain shareholder services and related expenses to the investment needs of particular investors. To accomplish this, and to expand its marketing alternatives, the Fund intends to adopt a Shareholder Servicing Plan ("the Plan"), separate and apart from the rule 12b–1 plan referenced in the preceding paragraph, for the Retail Shares in each Portfolio. In addition, the Fund intends to allocate transfer agency fees of a Portfolio according to class ("Class Transfer Agency Fees") because such fees will differ substantially for the Retail and Institutional Shares of a Portfolio.

8. Pursuant to the Plan, the Fund will enter into servicing agreements ("Servicing Agreements") with financial institutions ("Service Organizations") requiring them to provide administrative services to their clients ("Clients") who beneficially own Retail Shares. Such services may include: aggregating and processing purchase, exchange, and redemption requests from Clients and placing such orders with the distributor and transfer agent; processing dividend and distribution payments from a Portfolio and assisting Clients in changing dividend options, account designations, and addresses; providing information periodically to Clients showing their positions in Retail Shares; arranging for bank wires; providing subaccounting with respect to Retail Shares beneficially owned by Clients or the information necessary for subaccounting; and forwarding shareholder communications, such as proxies, shareholder reports, and divident, distribution, and tax notices, from a Portfolio to Clients. The administrative services provided to shareholders under the proposed Plan and related Servicing Agreements will not duplicate the services currently provided to the Portfolios by their investment advisers, administrator, distributor, custodian, and transfer agent.

9. Payments by a Portfolio to Service Organizations under the Plan and related Servicing Agreements ("Service Payments") will not exceed .50% (on an annualized basis) of the average daily net asset value of the Portfolio's Retail Shares.

10. Although the Plan will not be subject to the requirements of rule 12b–1 under the Act because it will not provide for payments for activities primarily intended to result in the sale of Shares, the Plan will be adopted and operated pursuant to procedures affording the major protections to investors provided by rule 12b–1, except that shareholders will not enjoy the voting rights specified in the rule.

11. Applicants believe that by implementing the Plan with respect to the Retail Shares, the Portfolios may be able to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. If the Plan is implemented as described above, the expense of Service Payments will be borne by the Clients who benefit from such services and not by the holders of Institutional Shares. Applicants acknowledge that this objective might be achieved through the organization of "mirror image" investment portfolios (each of which would duplicate a Portfolio but would be designed solely for Clients of Service Organizations), but believe that this alternative would be economically and operationally inefficient. Applicants assert that organizing and operating additional investment portfolios would cause the Fund to incur unnecessary accounting and bookkeeping costs and that unless the additional portfolios grew at a sufficient rate and to a sufficient size, they could face liquidity and diversification problems that would prevent them from producing a favorable return.

12. The net asset value of all outstanding Retail and Institutional Shares in a Portfolio will be computed on the same days and at the same times. The gross income of the Money Market, Government, Treasury and Tax Exempt Portfolios, which declare dividends daily, will be allocated on a pro rata basis to the outstanding Shares in the respective Portfolios regardless of class, and all expenses of each such Portfolio, except for the expenses of the Service Payments and Class Transfer Agency Fees, will be borne on a pro rata basis by such outstanding Shares. The gross income and all expenses, except for the expenses of the Service Payments and Class Transfer Agency Fees, of the Equity, Fixed Income, and Ohio Tax Exempt Portfolios, which do not declare dividends daily, will be allocated between Institutional Shares and Retail Shares of the respective Portfolios on the basis of their relative net assets.

13. Because of the Service Payments and Class Transfer Agency Fees, the net income of and the dividends payable to the Retail Shares will be lower than the net income of and the dividends payable to the Institutional Shares of the same Portfolio. Dividends paid to each class of Shares of a Portfolio will, however, be declared and paid (and the net asset value of each class will be determined) on the same days and at the same times and, except as noted with respect to the expenses of Service Payments and Class Transfer Agency Fees, will be determined in the same manner and paid in the same amounts.

14. In the case of the Equity, Fixed Income, and Ohio Tax Exempt Portfolios, which do not maintain a constant net asset value per share and do not declare dividends on a daily basis, the net asset value per share of the Retail and Institutional Shares of such Portfolios will vary.

Applicants' Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(b) of the Act to the extent that the proposed implementation of the Plan with respect to the Retail Shares and the allocation of Class Transfer Agency Fees to the Retail Shares and Institutional Shares of a portfolio might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act and therefore to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act. The implementation of the Plan and the allocation of Class Transfer Agency Fees may result in one class of Shares having "priority" over another as to payment of dividends and of the two classes of Shares having unequal voting rights, in contravention of the aforementioned provisions of the Act.

2. In support of the requested order, applicants assert that the proposed allocation of expenses and voting rights is equitable and will not discriminate against any group of shareholders. Holders of Shares, whether Retail or Institutional, will pay only for those transfer agency services actually received by the class. Investors purchasing Retail Shares and receiving services under the Plan will bear the costs associated with such services and will enjoy exclusive shareholder voting rights with respect to matters affecting the Plan. Applicants also assert that all holders of Shares are expected to benefit from the proposed arrangement, since the Portfolios' fixed costs will be spread over a greater number of shareholders than if the Fund were to operate mirror image investment portfolios. Finally, applicants assert that the proposed arrangement will not lead to any of the abuses section 18 of the Act was designed to eliminate.

Applicants' Conditions

Applicants agree that the following conditions will be imposed in any order granting the requested relief:

1. Each class of shares will represent interests in the same portfolio of investments of a Portfolio, and be identical in all respects, except as set forth below. The only differences between the classes of shares of the same Portfolio will relate solely to: (a) The impact of the Service Payments made by the Retail Shares of a Portfolio pursuant to the Plan, Class Transfer Agency Fees, and any other incremental expenses subsequently identified that should be properly allocated to one class and which are approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to the Fund's Plan; (c) the different exchange privileges of the classes of shares; and (d) the designation of each class of shares of a Portfolio.

2. The trustees of the Fund, including a majority of the independent trustees, will approve the dual distribution system relating to Retail Shares. The minutes of the meetings of the trustees of the Fund regarding the deliberations of the trustees with respect to the approvals necessary to implement the Plan will reflect in detail the reasons for the trustee's determination that the proposed Plan is in the best interests of both the Fund and its shareholders and such minutes will be available for inspection by the SEC staff and will be preserved for a period of not less than six years, the first two years in an easily accessible place.

3. On an ongoing basis, the trustees of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Portfolio for the existence of any material conflicts between the interests of the two class of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Fund's investment advisers and distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Portfolios' investment advisers and distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating the Plan, the trustees will specifically consider whether (a) the Plan is in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the Plan are required for the operation of the applicable classes, (c) the Service

Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

5. Each Servicing Agreement entered into pursuant to the Plan will contain a representation by the Service Organization that any compensation payable to the Service Organization in connection with the investment of its Clients' assets in a Portfolio (a) will be disclosed by it to its Clients, (b) will be authorized by its Clients, and (c) will not result in an excessive fee to the Service Organization.

6. Each Servicing Agreement entered into pursuant to the Plan will provide that, in the event an issue pertaining to the Plan is submitted for shareholder approval, the Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its Clients' accounts.

7. The Fund's Board of Trustees will receive quarterly and annual statements concerning shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the servicing of a particular class of shares will be used to justify any servicing fee charged to that class. Expenditures not related to the servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Portfolio with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Service Payments relating to each respective class of shares and the Class Transfer Agency Fees relating to each class of shares will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends of the two classes in a Portfolio and the proper allocation of expenses between the two classes in each Portfolio have been reviewed by an expert (the "Expert") who has rendered a report to the Fund, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. The Fund has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares of each Portfolio and the proper allocation of expenses between the two classes of shares of each Portfolio and this representation will be concurred with by the Expert in the initial report referred to in condition (9) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. The Fund will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectuses of the Portfolios will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for servicing Portfolio shares may receive different compensation with respect to one particular class of shares over another in the same Portfolio.

12. The Fund's distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Plan will be set forth in guidelines which will be furnished to the trustees.

14. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by the Fund for publication in any newspaper or similar listing of any Portfolio's net asset value and public offering price will present each class of shares separately.

15. The Fund acknowledges that the grant of the exemptive order requested by this Application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Portfolios may make pursuant to the Plan in reliance on the exemptive order.

16. The Money Market Portfolio, Government Portfolio, Treasury Portfolio and Tax Exempt Portfolio (and any future Portfolio of the Fund that allocates expenses that are not attributable to a specific class pro rata to each share regardless of class) will have more than one class of shares only when and for so long as each such Portfolio declares a daily dividend, accrues its payments under the Plan daily, and has received undertakings from the persons that are entitled to receive payments under the Plan waiving such portion of any such payments to the extent necessary to assure that the payments (if any) required to be accrued by any class of shares on any day do not exceed the income to be accrued to such class on that day. In this manner, the net asset value per share for all shares in the Money Market Portfolio, Government

Portfolio, Treasury portfolio and Tax Exempt Portfolio will remain the same.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-1644 Filed 1-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17947; File No. 812-7662]

Templeton Funds Annuity Company, et al.

January 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Templeton Funds Annuity Company (the "Company"), Templeton Immediate Variable Annuity Separate Account ("Separate Account").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the assessment of a 1.2% charge from the assets of the Separate Account for mortality and expense risks.

FILING DATE: The application was filed on December 20, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m. on February 12, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Thomas M. Mistele, Templeton Funds Annuity Company, 700 Central Avenue, P.O. Box 33030, St. Petersburg, Florida 33701-3628.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272-2058, or Barry Miller, Senior Attorney, at (202) 272-3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Company is a Florida insurance company organized on January 25, 1984. The Company is wholly owned by Templeton Funds Management, Inc. which, in turn, is an indirect wholly owned subsidiary of Templeton, Galbraith & Hansberger Ltd., a publicly-traded registered investment adviser. Templeton, Galbraith & Hansberger Ltd. is controlled by its majority stockholder, John M. Templeton.

2. The Separate Account was established by the Company pursuant to Florida law to fund Individual Immediate Annuity Contracts ("Contracts"). The Separate Account is registered as a unit investment trust.

3. The Separate Account presently invests solely in the shares of the Templeton Variable Annuity Fund (the "Fund"). The Fund is a diversified open-end management investment company.

4. Although no initial sales or expense charge is imposed, a withdrawal charge is deducted from any withdrawal in excess of the Scheduled Annuity Payments under Annuity Option 1 (life expectancy option) under certain conditions. The maximum amount of the withdrawal charge is 5% in the first contract year which reduces to 0% in year 6 and thereafter.

5. The Company will deduct an annual contract maintenance charge of $30 per contract year. The charge is imposed at the end of each contract year to compensate the Company for providing administrative services. The Company represents that it will not increase the annual contract maintenance charge.

6. The Company imposes an expense risk and mortality risk charge in the amount of 1.2% of the total net assets of the Separate Account. Of that amount, approximately .60% is attributable to mortality risks, and approximately .60% is attributable to expense risks. Applicants represent that the mortality and expense risk charges will not be increased with respect to Contracts once they are issued. If the mortality and expense risk charge is insufficient, to cover actual costs and assumed risks, the loss will fall on the Company. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to the Company. The Company currently anticipates that it will not profit from this charge. Applicants represent that annuity payments will not be affected by the mortality experience of persons receiving annuity payments or of the general population. For assuming this risk, the Company imposes the mortality risk charge. The expense risk borne by the Company results from its guarantee that ordinary expenses borne directly by the Separate Account will not exceed the explicit expense charges.

7. Applicants represent that the expense risk and mortality risk charges are reasonable in relation to the risks assumed by the Company under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing the Company to undue risk or loss, and fall within the range of similar charges imposed under competitive variable annuity products.

8. Applicants represent that the withdrawal charge that may be assessed in connection with any withdrawal in excess of the Scheduled Annuity Payments under Annuity Option 1 may be insufficient to cover all costs of distributing the contracts. Applicants state that if the actual amounts derived from the Withdrawal Charge prove insufficient to cover the actual costs of distributing the Contracts, the deficiency will be met from the Company's general corporate funds, including amounts derived from the risk charge.

9. Applicants represent that the level of expense risk and mortality risk charges are reasonable in relation to the risks assumed by Applicants under the Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon the Company's analysis of publicly available information about such contracts, taking into consideration the particular annuity features of comparable contracts, including such factors as current charge levels, charge level guarantees or annuity rate guarantees, the manner in which the charges are imposed, and the markets in which the contracts are offered.

10. The Company will maintain at its home office and make available to the Commission a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey of competitive annuity products.

11. The Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

12. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the 1940 Act to finance distribution expense.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1646 Filed 1–23–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Shipping Coordinating Committee

Subcommittee on Safety of Life at Sea Working Group on Ship Design and Equipment; Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on February 5, 1991 at 9:30 a.m. in room 2415 at United States Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC.

The purpose of the meeting will be to make final preparations for the 34th Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE) scheduled for March 4 to 8, 1991. Items of discussion will include the following: Use on board ships of ozone-depleting halons; guidelines on standard calculations for anchor positioning systems for MODUs; guidelines for dynamic positioning systems for MODUs and ships engaged in similar operations; materials other than steel for pipes; maneuverability of ships and maneuvering standards; helicopter facilities offshore; revision of design and construction requirements in the 1977 Torremolinos Convention; requirements for purpose and non-purpose-built ships dedicated to the carriage of irradiated nuclear fuel; development of a code on alarms and indicators; amendments of regulation II–1/45 of SOLAS 1974, as amended; ventilation of vehicle decks during loading and unloading; review of implementation status of Assembly resolutions related to the work of the subcommittee; underpressure in cargo oil tanks due to oil outflow after damage; carriage of dangerous goods on vehicle decks of passenger ships; consideration of the introduction of the Harmonized System of Surveys and Certification into the MODU Code; standards for shipboard incinerators for disposing of ship-generated waste; revision of the Code of Safety for Dynamically Supported Craft; hull cracking on ships; fuel line failures; bilge de-watering requirements in open-top container ships; review of the adequacy of IMO instruments in preventing and mitigating marine pollution incidents; and, the role of the human element in maritime casualties.

Members of the public may attend up to the seating capacity of the room.

The IMO DE Subcommittee works to develop international agreements, guidelines, and standards for machinery, equipment, and systems as these relate to the marine industry. In most cases, these international agreements, guidelines, and standards form the basis for national standards/regulations and class society rules. The U.S. SOLAS Working Group supports the U.S. Representative to the IMO DE Subcommittee in developing the U.S. position on those issues raised at the IMO DE Subcommittee meetings. Because of the impact on domestic regulations through development of these international guidelines, standards, and regulations, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All shipping companies, shipyards, design firms, naval architects, marine engineers, and consultants are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within IMO DE. Since these meetings are open to the public, anyone may attend.

For further information contact Captain T.E. Thompson at (202) 267–2967, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001.

Dated: January 10, 1991.

Joseph Richardson,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 91–1572 Filed 1–23–91; 8:45 am]

BILLING CODE 4710–07–M

Office of the Under Secretary for Economic Affairs

[Public Notice 1321]

Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has received an application from NOVA Petrochemicals, Inc. for a permit, pursuant to Executive Order 11423 of August 16, 1968, to construct, connect, operate and maintain at the United States/Canada border a pipeline to cross the St. Clair River between St. Clair County, Michigan and Corunna, Ontario, Canada. NOVA is a Canadian corporation, having its principal office at Ontario, Canada. The pipeline to be constructed would be used for the transportation of brine.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Akuetteh, Office of Global Energy, Department of State, Washington, DC 20520. (202) 647–2857.

Dated: December 20, 1990.

Richard T. McCormack,

Under Secretary of State for Economic Affairs.

[FR Doc. 91–1617 Filed 1–23–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–91–004]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Request for members to fill vacancies.

SUMMARY: The U.S. Coast Guard is seeking members for three year terms on the Navigation Safety Advisory Council (NAVSAC). On June 30, 1991, there will be seven vacancies on the 21-member Council. The Coast Guard will review all applications and make recommendations to the Secretary. The appointments will be made by the Secretary of Transportation.

DATES: Completed applications must be received by February 28, 1991.

ADDRESSES: To request an application, either call (202) 267–0415 and give your name and mailing address or write to Commandant (G–NSR–3), U.S. Coast Guard, 2100 Second Street SW., room 1420, Washington, DC 20593–0001. Completed applications should be mailed or delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council at (202) 267–0415.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council was originally established as the Rules of the Road Advisory a Council (RORAC under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073). the RORAC provided advice to the Secretary of Transportation on matters relating to the International and Inland Navigation Rules.

Section 105 of the Coast Guard Authorization Act of 1989 (Pub. L. 101–225; 33 U.S.C. 1231a(e)), enacted December 12, 1989, changed the name of the RORAC to the Navigation Safety Advisory Council (NAVSAC), broadened the scope of the Council, and extended the life of the Council to September 30, 1995.

NAVSAC is a deliberative body which advises the Secretary of Transportation via the Commandant, U.S. Coast Guard, on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The Council consists of 21 members who have expertise, knowledge and experience in the Navigation Rules of the Road (International and Inland), aids to navigation, navigational safety equipment, vessel traffic service, and tariff separation schemes and vessel routing. To assure balanced representation, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and State officials with responsibility for vessel and port safety.

The Council meets twice a year at various sites in the continental United States. Members are entitled to per diem in lieu of subsistence, as well as reimbursement for travel expenses to attend the meetings. The three year membership term will begin July 1, 1991, and expire June 30, 1994.

Dated: January 17, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91–1606 Filed 1–23–91; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Flight Data Recorder Systems

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C124 prescribes the minimum performance standards that flight data recorder systems must meet to be identified with the marking "TSO–C124."

DATES: Comments must identify the TSO file number and be received on or before April 30, 1991.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division Aircraft Certification Service—File No. TSO–C124 Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, room 335, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW. Washington, DC 20591, telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW. Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to commend on the proposed TSO listed in this notice by submitting such written date, views, or arguments as they desire to the above specified address. All communications received on or before the closing data for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO–C124 will specify minimum operational performance standards for flight data recorder systems. The document defines an improved minimum performance standard to increase the usefulness of flight data recorder systems for all aircraft required to carry flight data recorder systems for the purpose of accident investigations.

The document was developed by the European Organization for Civil Aviation Electronics (EUROCAE) with participation by U.S. manufacturers, airline operators, and U.S. civil authorities (Federal Aviation Administration and the National Transportation Safety Board). This document is an acceptable international standard.

How to Obtain Copies

A copy of the proposed TSO–C124 may be obtained by contacting "For Further Information Contact." TSO–C124 references the European Organization for Civil Aviation Electronics (EUROCAE) Document ED–55, "Minimum Performance Standard for Flight Data Recorder Systems." EUROCAE Document ED–55 may be purchased from the European Organization for Civil Aviation Electronics, 11 rue Hamelin, 75783 Paris Cedex 16, France.

Issued in Washington, DC, on January 16, 1991.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 91–1568 Filed 1–23–91; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 25, 1991.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs

Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10528-N	Ekohwerks Company, Eastlake, OH	49 CFR 178.36	To manufacture, mark and sell DOT Specification 3A cylinders constructed of 304L and 316L stainless steel without heat treatment for transportation of hazardous material presently authorized for shipment in 3A cylinders. (modes 1, 2, 3, 5).
10528-N	Akzo Chemicals Inc., Chicago, IL	49 CFR 173.121	To authorize transportation of carbon disulfide, classed as flammable liquid, in DOT Specifications 51 portable tanks. (modes 2, 3).
10529-N	LND, Inc., Oceanside, NY	49 CFR 173.302, 175.3	To manufacture, mark and sell a non-DOT specification container described as a hermetically sealed electron tube device for shipment of argon, classed as nonflammable gas. (modes 1, 4, 5).
10530-N	Rochester Midland, Rochester, NY	49 CFR 173.286(b)2 and (b)3	To comingle limited quantities of hazardous materials of various classifications in glass jars or plastics bottles individually wrapped with absorbent material overpacked in single wall corrugated containers with inner plastic liner, and described as chemical kits. (modes 1, 2, 3, 4).

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 17, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-1564 Filed 1-23-91; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 8, 1991.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application No.	Applicant	Renewal of exemption
2582-X	Airco Electronic Gases, San Marcos, CA	2582
3600-X	U.S. Department of Defense, Falls Church, VA	3600
4262-X	Schlumberger Well Services, Houston, TX	4262
4453-X	Econexpress, Inc., Wheaton, IL	4453
4453-X	Austin Sales, Inc., Vansant, VA	4453
4453-X	W.A. Murphy, Inc., El Monte, CA	4453
4453-X	Sierra Trucking, Inc., Reno, NV	4453
4453-X	Eldorado Chemical Company, St. Louis, MO	4453
5206-X	Kesco, Incorporated, Adrian, PA	5206
5895-X	Explosive Technology, Inc., Fairfield, CA	5895
5967-X	Rocket Research Company, Redmond, WA	5967
6126-X	Monsanto Agricultural Company, St. Louis, MO	6126
6232-X	McDonnel Douglas Corporation, St. Louis, MO	6232
6232-X	U.S. Department of Defense, Falls Church, VA	6232

Application No.	Applicant	Renewal of exemption
6816-X	U.S. Department of Defense, Falls Church, VA	6816
6816-X	General Dynamics Corporation, San Diego, CA	6816
6824-X	Bio-Lab Incorporated, Decatur, GA (See Footnote 1)	6824
6974-X	Tavco, Inc., Chatsworth, CA	6974
6974-X	U.S. Department of Defense, Falls Church, VA	6974
7051-X	Aldrich Chemical Company, Inc., Milwaukee, WI	7051
7495-X	Ethyl Corporation, Baton Rouge, LA	7495
7607-X	Radian Corporation, Herndon, VA	7607
7716-X	Kinepak, Inc. Dallas, TX	7716
7753-X	FMC Corporation, Philadelphia, PA	7753
7769-X	Brunswick Corporation, Lincoln, NE	7769
7835-X	Wesco/Welders Supply Company, Billerica, MA	7835
7879-X	Halliburton Logging Services, Inc., Houston, TX	7879
7969-X	Crosby & Overton, Inc., Long Beach, CA	7969
8195-X	McDonnell Douglas Corporation, St. Louis, MO	8195
8221-X	Applied Companies, San Fernando, CA	8221
8230-X	Seaster Chemicals, Inc. Sidney, British Columbia, Canada	8230
8232-X	Fisher Scientific Company, Fair Lawn, NJ	8232
8249-X	LPS Industries, Inc., Newark, NJ (See Footnote 2)	8249
8255-X	Applied Companies, San Fernando, CA	8255
8426-X	Rich-Sand Service Company, Orcutt, CA	8426
8426-X	Southwest Pumping Services, Whittier, CA	8426
8445-X	DowBrands, Indianapolis, IN	8445
8445-X	Rohm And Hass Company, Philadelphia, PA	8445
8445-X	McDonnell Douglas Corporation, St. Louis, MO	8445
8445-X	University of Minnesota, Minneapolis, MN	8445
8445-X	Dow Corning Corporation, Midland, MI	8445
8445-X	SET Environmental, Inc., Wheeling, IL	8445
8445-X	Aqua-Tech, Inc., Port Washington, WI	8445
8445-X	Monsanto Chemical Company, St. Louis, MO	8445
8445-X	Dow Chemical Company, Midland, MI	8445
8445-X	Rhone-Poulenc AG Company, Research Triangle Park, NC	8445
8445-X	U.S. Department of Defense, Falls Church, VA	8445
8445-X	FIW, Inc., Columbia, SC	8445
8453-X	Green Mountain Explosives, Inc., Auburn, NH	8453
8453-X	Energy Ventures Corp. dba Columbus Powder Company, Columbus, IN	8453
8453-X	Nelson Brothers, Inc., Parrish, AL	8453
8453-X	Austin Powder Company, Cleveland, OH	8453
8487-X	Brunswick Corporation, Lincoln, NE	8487
8547-X	Van Leer Containers Inc., Chicago, IL	8547
8573-X	Alstar Company, Tracy, CA	8573
8609-X	Van Leer Containers, Inc., Chicago, IL	8609
8614-X	Arrowhead Airways, Inc., Blaine, MN	8614
8620-X	Polar Tank Trailer, Inc., Hoklingford, MN	8620
8640-X	Fruehauf Trailer Corporation, Omaha, NE	8640
8645-X	A.M. Contracting, Grove City, PA	8645
8689-X	Schlumberger Well Services, Houston, TX	8689
8693-X	Cantro Inc., Olathe, KS	8693
8751-X	Delta Tech Service, Inc., Martinez, CA	8751
8937-X	Spectrulite Consortium, Inc., Madison, IL	8937
8962-X	Atochem, Paris, France	8962
8962-X	HTL/Kin-Tech Division, Duarte, CA	8962
8988-X	Baker Sand Control, Houston, TX	8988
8991-X	Lea-Ronal, Inc., Freeport, NY	8991
8995-X	Insta-Foam Products, Inc., Joliet, IL	8995
9019-X	Completion Services, Inc., Lafayette, LA	9019
9064-X	Amalgamet Canada—Division of Premetalco, Inc., Toronto, Ontario, Canada	9064
9064-X	PPM Pure Metals GMBH, Goslar, West Germany	9064
9066-X	Porsche Cars North America, Inc., Reno, NV	9066
9066-X	Volvo Cars of North America, Rockleigh, NJ	9066
9110-X	Albright & Wilson Americas Canada, Richmond, VA	9110
9144-X	Cajun Bag & Supply Company, Crowley, LA	9144
9174-X	McDonnell Douglas Corporation, St. Louis, MO	9174
9275-X	Robertet, Inc., Oakland, NJ	9275
9275-X	Firmenich, Incorporated, Princeton, NJ	9275
9308-X	Atochem North America, Inc., Buffalo, NY	9308
9338-X	Allied-Signal, Inc., Morristown, NJ	9338
9343-X	Aluminum Company of America (ALCOA), Pittsburgh, PA	9343
9346-X	Pennzoil Company, Houston, TX	9346
9346-X	IMC Fertilizer, Inc., Mundelein, IL	9346
9386-X	Pacific Scientific, HTL Division, Duarte, CA	9386
9401-X	Arbel Fauvet Rail, Paris, France	9401
9401-X	Atochem, Paris France	9401
9401-X	Societe Nationale De Wagons-Reservoirs, Paris, France	9401
9401-X	Ermetainer, Geneve, France	9401
9402-X	Exsit SA (France), Versailles, France	9402
9402-X	ALGECO, Paris, France	9402
9402-X	Arbel-Fauvet-Rail, St. Laurent-Balngy, France	9402
9402-X	NACCO, S.A., Paris, France	9402
9416-X	Mobay Corporation, Kansas City, MO	9416

Application No.	Applicant	Renewal of exemption
9416-X	CIBA-GEIGY Corporation, Hawthorne, NY	9416
9418-X	West Texas Fabrication, Odessa, TX	9418
9480-X	Air Products and Chemicals, Inc., Allentown, PA	9480
9480-X	E.I. du Pont de NeMours and Company, Inc., Wilmington, DE	9480
9481-X	Atlas Powder Company, Dallas, TX	9481
9485-X	Chem-Tech, Limited, Des Moines, IA	9485
9487-X	Chem-Tech, Limited, Des Moines, IA	9487
9499-X	Cleveland Container Corporation, Cleveland, OH	9499
9663-X	Siepe GMBH, Federal Republic Germany	9663
9678-X	Rossborough Manufacturing Company, Avon Lake, OH	9678
9679-X	Michlin Diazo Products Corporation, Dearborn, MI	9679
9689-X	Olin Corporation, Stamford, CT	9689
9697-X	E.I. du Pont de Nemours and Company, Inc., Wilmington, DE	9697
9730-X	Air Products and Chemicals, Inc., Allentown, PA	9730
9742-X	Bromine Compounds, Limited, Beer-Sheva, Israel	9742
9746-X	Airco Electronic Gases, San Marcos, CA	9746
9970-X	E.I. du Pont de Nemours and Company, Inc., Wilmington, DE	9970
10019-X	Structural Composites Industries, Inc., Pomona, CA	10019
10027-X	Japan Oxygen, Inc., Long Beach, CA	10027
10038-X	General American Transportation Corp., Chicago, IL	10038
10045-X	Federal Express Corporation, Memphis, TN	10045
10082-X	Stern Air, Inc., Dallas, TX	10082
10092-X	Thiokol Corporation, Brigham City, UT	10092
10103-X	General Motors Corporation, Warren, MI (See Footnote 3)	10103
10107-X	Beta Power, Inc., Wayne, PA	10107
10126-X	Moli Energy (1990), Limited, Maple Ridge, British Columbia, CN	10126
10127-X	Morton Thiokol, Inc.—Hunstville Division, Huntsville, AL	10127
10135-X	Ciba-Geigy Corporation, Hawthorne, NY	10135
10143-X	Eurocom Imports, Inc., Dallas, TX	10143
10267-X	Belick Enterprises, Inc., Schaumburg, IL (See Footnote 4)	10267
10285-X	Western Growers Association, Newport Beach, CA (See Footnote 5)	10285
10436-X	Sandoz Chemicals Corp., Charlotte, NC	10436
10468-X	Clawson Tank Company, Clarkson, MI (See Footnote 6)	10468
10489-X	U.S. Department of Defense, Falls Church, VA	10489
10497-X	General Electric Company, Princeton, NJ (See Footnote 7)	10497

(1) To renew and authorize additional commodities classed as oxidizers.
(2) To authorize cargo vessel as an additional mode of transportation.
(3) To renew and modify exemption to provide for an additional air bag module and rail as an additional mode of transportation.
(4) To modify exemption to provide for additional modes of transportation and additional commodities as authorized by part 173 to be shipped in DOT-specification packaging.
(5) To modify exemption to increase volumetric capacity per vehicle to 2,500 gallons, to eliminate inspection requirement and change the MAWP to psig.
(6) To renew exemption originally issued on emergency basis to authorize mfg., mark & sell of non-DOT spec. polyethylene portable tanks for shipment of certain corr. liq., flammable liq. or an oxidizer.
(7) To renew exemption orginally issued on an emergency basis to authorize shipment of nitrogen tetroxide in non-DOT specification stainless steel tank.

Application No.	Applicant	Parties to exemption
4338-P	Firestone Synthetic Rubber and Latex Company, Lake Charles, LA	4338
6563-P	SLO Air Products, Inc., Pismo Beach, CA	6563
6752-P	Ausimont USA, Inc., Morristown, NJ	6752
7835-P	Butler Gas Products Company, McKees Rocks, PA	7835
8554-P	GTS Transportation Services, Inc., Livermore, CA	8554
8582-P	Toledo, Peoria & Western Railway Corporation, East Peoria,	8582
8627-P	PreTreat, Inc., Midland, TX	8627
8871-P	U.S. Sack Corporation, Grand Junction, CO	8871
9275-P	ROURE, Inc., Teaneck, NJ	9275
9275-P	Jean Philippe Fragrances, Inc., New York, NY	9275
9607-P	Estee Lauder, Inc., Melville, NY	9607
9769-P	MP Environmental Services, Inc., Bakersfield, CA	9769
9921-P	Rockwell International Corporation, Anaheim, CA	9921
10001-P	Newkirk Sales Company, Waterloo, IA	10001
10001-P	Sommerfeld Welders Supply Company, Inc., Oshkosh, WI	10001
10173-P	Albright & Wilson Americas, Islington, Ontario, Canada	10173
10419-P	Hill Brothers Chemical Company, Phoenix, AZ	10419
10419-P	Olin Chemicals, Stamford, CT	10419

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 16, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-1565 Filed 1-23-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 17, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0153
Form Number: 3206
Type of Review: Extension
Title: Information Statement by United Kingdom Withholding Agents Paying Dividends from United States Corporations to Residents of the U.S. and Certain Treaty Countries.
Description: Used to report dividends paid by U.S. corporations through United Kingdom nominees to beneficial owners who are residents of countries other than the United Kingdom with which the U.S. has a tax treaty providing for reduced withholding rates on dividends. The data is used by IRS to determine whether the proper amount of income tax is withheld.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Number of Respondents: 9,000
Estimated Burden Hours Per Response/ Recordkeeping: 1 hr., 57 mins.
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting burden: 17,550 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-1569 Filed 1-23-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

January 17, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0256
Form Number: 941c and 941cPR
Type of Review: Revision
Title: Statement to Correct Information; Planilla Para La Correction De Informacion
Description: Used by employers to correct previously reported FICA or income tax data. It may be used to support a credit or adjustment claimed on a current return for an error in a prior return period. The information is used to reconcile wages and taxes previously reported or used to support a claim for refund credit or adjustment of FICA or income tax
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Repondents: 958,050
Estimated Burden Hours Per Response/ Recordkeeping:
941c, 8 hours, 59 minutes
941cPR, 7 hours, 32 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 8,528,697 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-1615 Filed 1-23-91; 8:45 am]

BILLING CODE 4830-01-M

[No. 15-30]

Directive

Delegation of Authority to the Commissioner of Customs To Waive the Application of 46 U.S.C. App. 883

January 17, 1991.

1. *Purpose.* This directive delegates to the Commissioner of Customs the authority to waive the application of 46 U.S.C. App. 883 pursuant to findings under Presidential Memorandum of January 16, 1991, on Severe Energy Supply Interruption.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by the Act of December 27, 1950, 64 Stat. 1120 (note preceding 46 U.S.C. App. 1) and 31 U.S.C. 321(b), and pursuant to the authority delegated to the Assistant Secretary (Enforcement) by Treasury Order 101-05, and pursuant to the President's memorandum of January 16, 1991, to the Secretary of the Treasury, the Commissioner of Customs is hereby authorized and directed to approve applications for waivers of 46 U.S.C. App. 883 upon findings that such waivers are for the purpose of facilitating the first maritime transportation from the Strategic Petroleum Reserve of crude oil sold in the Strategic Petroleum Reserve drawdown and distribution pursuant to the President's finding of a severe energy supply interruption of January 16, 1991.

3. *Redelegation.* The authority delegated by this directive may be redelegated.

4. *Office of primary interest.* Office of the Assistant Secretary (Enforcement).

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-1613 Filed 1-23-91; 8:45 am]

BILLING CODE 4810-25-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 708 Ref: ATF O 1100.154]

Delegation of Certain Authorities of the Director in 27 CFR Parts 170 and 296

1. Purpose. This order delegates the authorities of the Director with respect to the approval and withdrawal of alternative methods and procedures in connection with floor stocks tax requirements to the Chief, Revenue Programs Division and the regional directors (compliance).

2. Background. Pursuant to Public Law 101–508, 104 Stat. 1388, a floor stocks tax is imposed on Federally taxpaid or tax determined alcoholic beverages and imported perfumes held for sale on January 1, 1991, as well as on taxpaid or tax determined cigarettes held for sale on the tax increases dates of January 1, 1991, and January 1, 1993. Under the regulations in subpart F of 27 CFR part 170 and in subpart I of 27 CFR part 296, the Director has authority to approve and withdraw alternate methods and procedures relating to floor stocks tax requirements. We have determined that this authority should, in the interest of efficiency, be delegated to a lower organization level.

3. Delegations. Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by the Treasury Department Order No. 120–01 (formerly 221), effective July 1, 1972, and by 26 CFR 301.7701–9, authority to act on applications for alternative methods or procedures under 27 CFR 170.103 and 296.193 is delegated as follows:

a. Chief, Revenue Programs Division. The Chief, Revenue Programs Division is authorized to approve, pursuant to written applications, alternate methods or procedures in lieu of methods or procedures specifically prescribed in the regulations, and is authorized to withdraw approval of any alternate method or procedure whenever the revenue is jeopardized or the effective administration of the regulations is hindered.

b. Regional Directors (Compliance). Regional directors (compliance) are authorized to approve, without submission to Bureau Headquarters, subsequent applications for alternate methods or procedures identical to those previously approved by the Chief, Revenue Programs Division and to withdraw approval of alternate methods or procedures which were approved at the regional level.

4. Redelegation. The authority delegated herein may not be redelegated.

5. For Information Contact. Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, (202) 566–7626.

6. Effective Date. This delegation order becomes effective on January 24, 1991.

Approved: January 16, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91–1608 Filed 1–23–91; 8:45 am]

BILLING CODE 4810–31–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 16
Thursday, January 24, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

* * * * *

DATE AND TIME: Tuesday, January 29, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 347g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 31, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1990-28—Partrick Whittle on behalf of Call Interactive
Status of Presidential Audits
Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-1719 Filed 1-22-91; 10:44 am]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday Janary 28, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21 Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank holding company applications scheduled for the meeting.

Dated: January 18, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-1705 Filed 1-18-91; 5:09 pm]
BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting—Amendment of Agenda

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published on January 23, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 28, 1991, commencing at 9:00 a.m.

EXPLANATION OF CHANGE: Meeting will commence at 10:00 a.m.

STATUS OF MEETING: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board of Directors to discuss privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (4), (5), (7), and (10) and 45 CFR 1622.5 (c), (d), (f), and (h)].

MATTERS TO BE CONSIDERED: A portion of the meeting may be closed for the reasons cited above, subject to an advance recorded vote of a majority of the Board of Directors.

1. Approval of Agenda.
2. Approval of Minutes.
   —September 23-24, 1990
3. Election of Board Chairman and Vice-Chairman.
   a. Chairman's Remarks.
   b. Vice-Chairman's Remarks.
4. President's Report.
5. Discussion of Board Committee Structure.
6. Report on 1991 Application for Funding.
7. Report on the Fiscal Year (FY) 1990 and 1991 Consolidated Operating Budgets.
8. Legislative Report.
9. Presentation and Discussion of Proposals for FY 1992 Budget Mark.
10. Resolution Offered by Mr. Dana.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: January 22, 1991.

Maureen R. Bozell,
Corporation Secretary.

[FR Doc. 91-1854 Filed 1-22-91; 4:03 pm]
BILLING CODE 7050-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: January 24 and 25, 1991, 9:30 a.m. to 4:45 p.m. and 9:00 a.m. to 4:00 p.m., respectively.

PLACE: Leavy Center, Conference Center and Guest House, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Opening Remarks, Chairman Reid
Chairman's Report
Approval of October Minutes
Approval of Agenda
Executive Director's Report
Guest Speaker: Richard Dougherty, President, School of Information Studies, U. of Michigan
Executive Committee Report and Recommendations
White House Conference, Report and Discussion
Tour, Georgetown University Library
Annual Organization Business Meeting
Committee Reports
Discussion, NCLIS Program Planning and Goals
Old Business
New Business

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, Special Assistant to the Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036. (202) 254-3100.

Dated: December 27, 1990.

Jane Williams,
Acting Executive Director.

[FR Doc. 91-1855 Filed 1-22-91; 3:55 pm]
BILLING CODE 7527-01-M

NATIONAL WOMEN'S BUSINESS COUNCIL

TIME AND DATE: 9:00 am-3:00 pm, February 1, 1991.

PLACE: New York Marriott East Side, 525 Lexington Avenue, New York, NY 10017.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: In accordance with the Women's Business

Ownership Act, Public Law 100–533 as amended, the National Women's Business Council announces a forthcoming meeting on February 1, 1991. Council members will be briefed on establishing a data base by various experts at their open meeting from 9:00 am to 11:30 am and will discuss future Council goals and activities at their closed meeting from 11:30 am to 3:00 pm.

PORTIONS OPEN TO THE PUBLIC: 9:00 am–11:30 am, February 1, 1991. Briefing on establishing a data base.

PORTIONS CLOSED TO THE PUBLIC: 11:30 am–3:00 pm, February 1, 1991, Discussion of Council goals and activities.

CONTACT PERSON FOR MORE INFORMATION: Helen W. Robbins, Executive Director, National Women's Business Council, 1441 L Street, NW., Room 414, Washington, DC, 20416 (202) 653–8080.

Helen W. Robbins,

Executive Director, National Women's Business Council.

[FR Doc. 91–1722 Filed 1–22–91; 10:44 am]

BILLING CODE 6820–AB–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 21, 28, February 4, and 11, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 21

Thursday, January 24

1:30 p.m.
Periodic Breifing on Operating Reactors and Fuel Facilities (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Request for Hearing and Petitions to Intervene Regarding Request for "Possession Only" License for Shoreham

Week of January 28—Tentative

Friday, February 1

10:00 a.m.
Breifing on Status of Final Rule on License Renewal—Part 54 (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 4—Tentative

Friday, February 8

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 11—Tentative

Tuesday, February 12

1:30 p.m.
Annual Briefing on Medical Use of Byproduct Material (Public Meeting)

Friday, February 15

10:00 a.m.
Briefing on Reactor Operation Requalification Program (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: January 18, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–1757 Filed 1–22–91; 1:50 pm]

BILLING CODE 7590–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, February 5, 1991, in Washington, DC. The meeting is open to the public and will be held in the Benjamin Franklin Room at Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, February 4, 1991, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

February 5—8:30 a.m. (Open)

1. Minutes of Previous Meetings, January 7–8 and January 22, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Appointment of Audit Committee Members. (Norma Pace, Chairman of the Board)
4. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
5. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
6. Capital Investment. Address Recognition Research Program. (Karen T. Uemoto, Assistant Postmaster General, Technology Resource Department)
7. Tentative Agenda for March 4–5, 1991, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 91–1840 Filed 1–22–91; 2:43 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 56, No. 16
Thursday, January 24, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 90-227]

Tuberculosis in Cattle and Bison; State Designation; Ohio

Correction

In rule document 90-29736 beginning on page 52167 in the issue of Thursday, December 20, 1990, make the following corrections:

1. On page 52167, in the third column, under **BACKGROUND**, in the third line, "September 25, 1990" should read "September 19, 1990", and insert a comma after "38535".

2. On page 52168, in the first column, in the third line from the top, "November 26, 1990" should read "November 20, 1990".

3. On the same page, in the second column, under **LIST OF SUBJECTS *****, "Animals" should read "Animal"; and in the last line of the paragraph beginning with "Accordingly", "September 25, 1990" should read "September 19, 1990".

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Proclamation 6241 of January 11, 1991

National Sanctity of Human Life Day, 1991

Correction

In Presidential Proclamation 6241, in the issue of Wednesday, January 16, 1991, on page 1560, make the following correction:

In the last sentence of the top paragraph, the phrase "joy to the lives of our fellow citizens" should read "joy to the lives of many of our fellow citizens."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8320]

RIN 1545-AM55

Treatment of Certain Losses Attributable to Periods After October 31 of a Taxable Year of a Regulated Investment Company

Correction

In rule document 90-28432 beginning on page 50174 in the issue of Wednesday, December 5, 1990, make the following correction:

§ 1.852-11 [Corrected]

On page 50177, in § 1.852-11(f)(4), in the third column, in the fourth line from the bottom of the page, "grains" should read "gains".

BILLING CODE 1505-01-D

federal register

Thursday
January 24, 1991

Part II

Department of Transportation

Federal Aviation Administration

Request for Comment and Information; Report to Congress; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Notice No. 91-1; Docket No. 26447]

Request for Comment and Information; Report to Congress

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comment and information regarding Report to Congress on recommendations for a national aviation noise policy.

SUMMARY: This notice requests comment and information to help fulfill a requirement of the Airport Noise and Capacity Act of 1990 instructing the Secretary of Transportation to provide recommendations to the U.S. Congress on specific aviation noise policy issues. This notice solicits, on a voluntary basis, information and comment on specific issues and questions which would be helpful in providing a useful Report to Congress.

DATES: Comments should be submitted as soon as possible, and no later than February 15, 1991. Comments received beyond this date cannot be assured consideration.

ADDRESSES: Send all comments and information in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26447, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Tony Fazio, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3564.

SUPPLEMENTARY INFORMATION:

Background

Airport related noise currently affects several million people in the United States. In an effort to resolve this problem, a number of Federal initiatives have been implemented over the last several decades. To encourage quieter aircraft, the Congress, in 1968, amended the Federal Aviation Act of 1958 to require all jet aircraft to meet Federal noise standards. Subsequent regulations required that all newly manufactured aircraft meet progressively stricter noise levels. In 1976, the FAA established regulations which required the phaseout of the Stage 1 aircraft. This action reduced the number of individuals residing in the DNL 65 noise contour from about 7 million people in the 1970's to approximately 3 million today.

Understanding that land-use compatibility planning is an essential part of easing the effects of aircraft noise, Airport Improvement Program (AIP) funding is available to fund noise compatibility programs such as soundproofing, easements, relocation expenses, and related studies. Currently, not less than 10 percent of funds made available under the AIP for any fiscal year shall be obligated for planning and implementing noise compatibility programs. In each fiscal year since 1982 the amount of funds made available for noise compatibility projects has exceeded the minimum statutory requirement through the use of airport entitlements or additional discretionary funding. In addition, Federal Aviation Regulation, part 150, Airport Noise Compatibility Program was established in 1981 to guide and control planning for aviation noise compatibility on and around airports.

Along with the Federal initiative, the Aviation Noise and Abatement Policy Statement of 1976 identified the roles of the Federal and State/local governments, and airport proprietors in noise abatement solutions. In particular, the policy stated that "State and local governments and Planning agencies must provide for land-use planning and development, zoning, and housing regulations that will limit the uses of land near airports to purposes compatible with airport operations."

The Aviation Safety and Capacity Expansion Act of 1990 (hereinafter "the legislation"), enacted November 5, 1990, directs the Secretary of Transportation to issue regulations establishing a national aviation noise policy. Specifically, the legislation requires the mandatory phaseout of Stage 2 aircraft by the year 2000, the Federal review of future Stage 2 restrictions and Federal approval of future Stage 3 aircraft noise restrictions, and the provision that any airport that does not comply with the national noise policy will not be permitted to impose or collect passenger facility charges or receive airport revenues under the provisions of the Airport and Airway Improvement Act of 1982. These regulations are being developed concurrently through separate rulemaking procedures.

Additionally, the legislation directs the Secretary to transmit recommendations to Congress, no later than July 1, 1991, on other specific issues related to aviation noise. In particular, the legislation requests recommendations on the following issues:

(1) The need for changes in the standards and procedures which govern the rights of State and local governments (including airport authorities) to restrict aircraft operations for the purpose of limiting aircraft noise;

(2) The need for changes in the standards and procedures which govern law suits by persons adversely affected by aircraft noise;

(3) The need for changes in standards and procedures for Federal regulation of airspace (including the pattern of operations for the air traffic control system) in order to take better account of environmental effects;

(4) The need for changes in the Federal program providing assistance for noise abatement planning and programs, including the need for greater incentives or mandatory requirements for local restrictions on the use of land impacted by aircraft noise;

(5) Whether any changes in policy recommended in paragraphs (1) through (4) should be accomplished through regulatory, administrative, or legislative action; and

(6) Specific legislative proposals necessary for implementing the national aviation noise policy.

Request for Information

The FAA is particularly interested in soliciting comment and information regarding the six specific issues requested by Congress. To help focus the content of discussion, the following questions are provided to stimulate thought and comment. The public is encouraged to provide additional comment regarding any of the issues requested by Congress.

(1) How might all airports and associated communities be encouraged to participate in land-use compatibility planning?

(2) How might airports and associated communities be encouraged to protect and improve land-use compatibility around airports?

(3) What mandatory restrictions would be useful, desirable, and reasonable for the Federal Government to impose on the use of land impacted by aircraft noise either under existing law or new legislation?

(4) Would financial or other incentives, either to local governments or the private sector, promote compatible land-use around airports? If so, what might the incentives be, how might they be implemented, and how might they be funded?

(5) How can land-use provisions proposed for adoption under a FAR part 150 airport noise compatibility program be assured implementation?

(6) Is there a need for additional guidance on airport noise control and

land-use compatibility planning? If so, what type?

(7) Should a Federal, State, or local mechanism be established to ensure that all prospective home owners within noncompatible land-use areas be provided sufficient notice of current and/or potential noise impacts?

(8) Should a process be established to provide financial or other incentives in exchange for an assurance that no airport noise or access restrictions will be placed on the operations of Stage 3 aircraft? What would the incentives be, how might they be implemented, and how might they be funded?

(9) Should airport environmental protection areas (AEPA) which promote compatible land-use around airports be encouraged or adopted by state legislation? Should new financial or other incentives be provided if AEPA's are adopted?

(10) The FAA has recently issued a directive which mandates the evaluation of environmental consequences prior to implementation of air traffic procedural changes which would routinely route air traffic over residential areas above 3,000 feet ground level. This directive provides a means of identifying new or revised air traffic procedures resulting in increased noise exposure and enables procedures specialists to design new procedures with optimal environmental consideration. What further changes, if any, should be considered whenever significant air traffic procedures are adopted?

(11) Section 9308(b) of the legislation permits the Secretary to grant waivers to domestic U.S. air carriers from the December 31, 1999, Stage 3 compliance deadline so long as a carrier's fleet is at least 85 percent Stage 3 by July 1, 1999, and if the carrier has firm orders for hush kit or new plane deliveries after December 31, 1999. Waivers may not extend beyond December 31, 2003, and must be shown to be in the public interest. Should a similar waiver provision be afforded international carriers serving U.S. ports of entry? If so, how might such a waiver be implemented and enforced?

(12) Should existing Federal standards and procedures concerning aviation noise law suits be modified to reflect the changes enacted under the new legislation?

The questions listed above are included to help stimulate constructive thought and to encourage public response to the docket. Comments are not restricted only to these questions. However, the FAA requests that any comments associated with specific rulemaking required under the legislation be submitted to public dockets established for this purpose. Your participation in this opportunity for comment is encouraged.

Issued in Washington, DC on January 17, 1991.

James E. Densmore,

Director, Office of Environment and Energy.

[FR Doc. 91-1567 Filed 1-17-91; 3:47 pm]

BILLING CODE 4910-13-M

federal register

Thursday,
January 24 199

Part III

Environmental Protection Agency

40 CFR Part 125

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL-3617-6]

RIN 2040-AB29

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the regulations contained at 40 CFR part 125, subpart G, which implement section 301(h) of the Clean Water Act (the "CWA" or "Act"), 33 U.S.C. 1311(h). Section 301(h) provides for modifications of secondary treatment requirements for discharges into marine waters by publicly owned treatment works (POTWs) that demonstrate their compliance with the 301(h) criteria. These proposed revisions to the 301(h) regulations and application requirements are primarily intended to implement amendments to section 301(h) contained in section 303 of the Water Quality Act of 1987 ("WQA"). At the same time, changes to the questionnaires and regulations have been proposed to reflect program experience and to clarify requirements for permit renewal. These amendments will supplement and revise the existing part 125, subpart G regulations and simplify and revise the application requirements contained in appendices A and B of subpart G. Only POTWs which submitted 301(h) applications prior to December 28, 1982, are eligible to receive section 301(h) waivers; the part 125, Subpart G regulations apply only to POTWs that applied by that date.

DATES: Comments on these proposed amendments, the Application Questionnaire revisions, and the amended Technical Support Document (TSD) must be submitted on or before March 25, 1991. The public hearing on these proposed regulations will be held in Washington, DC on March 7, 1991 from 1–5 pm at the EPA Headquarters Education Center Main Auditorium, 401 M Street, SW., Washington, DC.

ADDRESSES: Comments and requests for the amended section 301(h) Technical Support Document should be addressed to: Virginia Fox Norse, Office of Marine and Estuarine Protection (WH–556F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 475–7129. The official record for this rulemaking is available for viewing in the Public Information Reference Unit, room 2904, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 382–5926, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. The March 7, 1991, 1–5 pm public hearing will be held at the EPA Headquarters, 401 M Street SW., Washington, DC in the Education Center Main Auditorium.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Office of Marine and Estuarine Protection (WH–556F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 475–7129.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Background

Under section 301(b)(1)(B) of the Clean Water Act (CWA or Act) (33 U.S.C. 1311(b)(1)(B)), POTWs were required to achieve secondary treatment by July 1, 1977. Congress amended the CWA in 1977 to add section 301(h), 33 U.S.C. 1311(h), to allow the Administrator, upon application by a POTW and with the concurrence of the State, to issue a National Pollutant Discharge Elimination System (NPDES) permit which modifies the secondary treatment requirements of section 301(b)(1)(B). POTWs were allowed for a limited time to apply for a section 301(h) modified NPDES permit into marine or estuarine waters if the applicant could demonstrate to the satisfaction of the Administrator that the proposed discharge would comply with the section 301(h) criteria and all other NPDES permit requirements.

Section 301(h) was later amended by the Municipal Wastewater Treatment Construction Grants Amendments (MWTCGA) of 1981 (Pub. L. 97–117, 95 Stat. 1623). These amendments resulted in the following changes:

(1) Any POTW which proposed to discharge into marine waters was eligible to apply for a section 301(h) modified permit within the specified time period. Previously, only POTWs actually discharging into such waters as of December 27, 1977, were eligible.

(2) The deadline for submission of 301(h) applications (in section 301(j)(1)(A) of the Act) was extended until December 29, 1982.

(3) POTWs achieving secondary treatment could apply to discharge pollutants at less than secondary treatment levels.

(4) EPA was prohibited from granting section 301(h) modified permits for the discharge of sewage sludge.

(5) Section 301(h)(8), which stated that construction grant funds available to section 301(h) waiver recipients had to be used to carry out best practicable wastewater treatment technology or the requirements of section 301(h), was repealed.

B. New Statutory Requirements

On February 4, 1987, Congress passed the Water Quality Act of 1987 (Pub. L. 100–4), which amended CWA section 301(h) in several important respects. Section 303 of the WQA, which contains the amendments to section 301(h), resulted in the following changes:

(1) Discharges, in accordance with modified requirements, cannot interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of water quality which assures the protections and uses listed in section 301(h)(2).

(2) The scope of required monitoring is limited to only those investigations necessary to study the effects of the proposed discharge.

(3) For POTWs serving a population of 50,000 or more, with respect to any toxic pollutant introduced by an industrial source for which pollutant there is no applicable pretreatment requirement in effect, the applicant must demonstrate that sources introducing waste into the POTW are in compliance with all applicable pretreatment requirements, the applicant will enforce those requirements, and the POTW has in effect a pretreatment program which, in combination with the POTW's own treatment processes, removes the same amount of the toxic pollutant as would be removed if the POTW were to apply secondary treatment and had no pretreatment program for the pollutant.

(4) At the time the 301(h) modification becomes effective, the applicant will be discharging effluent which has received at least primary or equivalent treatment and which meets water quality criteria established under CWA section 304(a)(1) after initial mixing in the waters surrounding or adjacent to the point at which the effluent is discharged.

(5) No modification may be issued for a discharge into marine waters unless those waters exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from the POTW.

(6) No permits may be issued for discharges into estuarine waters which exhibit certain specified stressed conditions, without regard to whether the applicant's discharge is causing or will cause those conditions. No permits may be issued for discharges into the

New York Bight Apex under any conditions.

(7) Any POTW that had a contractual agreement before December 31, 1982, to use an outfall operated by another POTW which has applied for or received a section 301(h) modified permit may apply for a 301(h) permit in its own right within 30 days of WQA enactment.

(8) Certain provisions of the WQA amendments do not apply to applications which received final or tentative approval before enactment of the WQA. These permits will, however, be subject to the new section 301(h) requirements upon permit renewal.

Unless noted otherwise, the statutory citations in the remainder of this preamble will refer to section 301(h) of the CWA and its various subsections, as amended by the WQA, rather than to section 303 of the WQA.

C. Regulatory Development

EPA initially promulgated regulations implementing section 301(h) of the CWA on June 15, 1979 (44 FR 34784; 40 CFR part 125, subpart G). Those regulations were challenged in part in the U.S. Court of Appeals for the District of Columbia Circuit. As a result, the Court invalidated three provisions of the regulations in *Natural Resources Defense Council, Inc.* v. *EPA* ("NRDC"), 656 F.2d 768 (DC Cir. 1981).

In response to the statutory amendments of the MWTCGA and the results of the *NRDC* suit, EPA promulgated amendments to the section 301(h) regulations on June 8, 1982 (47 FR 24918). The preamble to those final amendments explains the results of the lawsuit, the MWTCGA statutory changes, and the ensuing regulatory amendments. On November 26, 1982, EPA promulgated further amendments to the section 301(h) regulations (47 FR 53666). These amendments were intended to reflect EPA's program experience, to respond to Executive Order 12291, and to respond to the September 11, 1981, rulemaking petition from the Pacific Legal Foundation.

The current part 125, subpart G regulations (i.e., prior to today's proposed amendments) require a POTW seeking a section 301(h) modified permit to demonstrate the following:

(1) There is an applicable water quality standard specific to the pollutants for which the modification is sought;

(2) The modified requirements will not interfere with the attainment of water quality which protects public water supplies, provides a balanced indigenous population of shellfish, fish and wildlife, and allows recreational activity;

(3) It has established a system to monitor impacts on aquatic biota, to the extent practicable;

(4) The modified requirements will not result in additional requirements on other point or nonpoint sources;

(5) All applicable pretreatment requirements for sources introducing wastes into the POTW will be enforced;

(6) It has established a schedule of activities to eliminate the introduction of toxic pollutants into the POTW from nonindustrial sources, to the extent practicable;

(7) There will be no new or substantially increased discharges from the point source of the pollutants to which the modification applies above the discharge volumes specified in the permit.

POTWs receiving 301(h) variances are required to develop and implement effluent, receiving water, and biological monitoring programs. Permittees that have known or suspected industrial sources of toxic pollutants are required to have an approved pretreatment program in accordance with 40 CFR part 403 and are required to meet NPDES permit requirements, including the use of appropriate biological techniques (such as whole effluent toxicity testing, where necessary; 49 FR 9016, March 9, 1984) as a complement to chemical specific analyses to assess effluent toxicity, which can lead to a modification in permit limitations.

The purpose of monitoring toxic pollutants and pesticides in the POTW effluent is to emphasize the detection of toxic pollutants and relate discharge characteristics to receiving water quality, to evaluate treatment plant performance and compliance with effluent limitations in permits, and to determine the effectiveness of toxics control programs required for both industrial and non-industrial sources discharging to the POTW. The 301(h) regulations also require an analysis by the applicant of whether treatment of a POTW's discharge at less than secondary treatment levels will require other point or nonpoint pollutant sources to increase their treatment levels or apply additional controls.

Today, EPA is proposing amendments to the regulations to reflect program experience, to implement the requirements of the Water Quality Act, and to clarify the permit renewal process.

D. Status of Permit Decisions

EPA received 208 permit applications by the statutory deadline of December 29, 1982. As of the end of 1988, 142 permit modifications had been finally denied or withdrawn, and 48 had received final EPA approval. EPA has not reached decisions on the remaining 18 permit applications. A number of the 48 modified permits will expire in the near future. These permittees should begin to consider how they intend to comply with the new proposed regulatory requirements. In particular, they should give early consideration to the new requirements in proposed §§ 125.60 (primary or equivalent treatment) and 125.65 (urban area pretreatment program), including the possible need to develop local limits or require additional treatment to satisfy the latter provision, as discussed below.

E. Organization of Preamble

Section II of this preamble discusses the EPA's proposed changes to the existing regulations in response to the statutory amendments. Section III contains a section-by-section analysis of the proposed regulations, indicating where changes have been proposed to the existing regulations and the reasoning for the changes. Section IV addresses compliance of the proposed regulations with Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act. The agency has completed analyses of the scope and magnitude of impacts related to these proposed regulatory changes. More detail regarding these impacts can be found in Section IV or in the Economic Impact Analysis (EIA) and the Information Collection Request (ICR).

II. Response to the Statutory Amendments

The following is a description of today's proposed changes to the regulations implementing section 301(h), as summarized in the table below. The discussion is organized according to the subsections of section 303 of the WQA. Citations to parts of the part 125, subpart G regulations in the discussion below refer to the section numbers of the regulations as renumbered under today's proposal.

Proposed Subpart G Revision	Contents of Revised Section	Current Subpart G	Changes to Current Subpart G
125.56	Scope and Purpose	125.56	Unchanged.
125.57	Law governing issuance of a section 301(h) modified permit	125.57	Incorporates new Water Quality Act (Pub. L. 100–4) provisions.
125.58	Definitions	125.58	Adds and clarifies definitions.
125.59	General	125.59	Amended to conform to new statutory requirements and adds reapplication procedures.
125.60	Primary or equivalent treatment requirements		New section.
125.61	Existence of and compliance with applicable water quality standards.	125.60	Redesignated, otherwise unchanged.
125.62	Attainment or maintenance of water quality which assures protection of water supplies, and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.	125.61	Amended to conform to new statutory requirements; redesignated.
125.63	Establishment of a monitoring program	125.62	Amended to conform to new statutory requirements; redesignated.
125.64	Effect of discharge on other point and nonpoint sources	125.63	Redesignated, otherwise unchanged.
125.65	Urban area pretreatment program		New section.
125.66	Toxics control program	125.64	Amended to update deadlines for pretreatment program approval; redesignated.
125.67	Increase in effluent volume or amount of pollutants discharged.	125.65	Redesignated, otherwise unchanged.
125.68	Special conditions for section 301(h) modified permits	125.67	Minor conforming changes; redesignated.
Appendix	Applicant questionnaire for modification of secondary treatment requirements.	Appendix	Amended to consolidate into one combined questionnaire.

WQA section 303(a), amending CWA section 301(h)(2): Previously, this section required a demonstration that the applicant's discharge will not interfere with the attainment or maintenance of water quality which assures protection of public water supplies and the protection and propagation of a balanced indigenous population (BIP) of fish, shellfish, and wildlife, and allows recreational activities. Under the WQA amendments, the applicant must now demonstrate that there will be no such interferences attributable to its own modified discharge, alone *or* in combination with pollutants from other sources.

Under the existing section 301(h) regulations (§ 125.62(f)), EPA already considers the combined effects of the modified discharge and other pollutant sources when evaluating compliance with the requirements of 301(h)(2). Specifically, under § 125.62(f), the applicant must demonstrate compliance with the requirements in the rest of § 125.62 unless it can show that the failure to meet those requirements is entirely attributable to other sources. In other words, the applicant is already required to make these water quality demonstrations with respect to its discharge alone or in combination with those from other sources; it is released from these requirements only if it can show that the interferences are entirely attributable to the other sources. The current regulations are thus already fully consistent with the requirement added by WQA section 303(a). Nevertheless, because this is now a statutory requirement, EPA is proposing to add language to § 125.62(f) to clarify this issue. This new language makes clear that it is not sufficient to demonstrate that an applicant's own modified discharge will not interfere with the attainment or maintenance of water quality as specified in the remainder of § 125.62. Instead, EPA will evaluate such compliance based on the combined effects of the applicant's modified discharge and pollutants from other sources.

WQA section 303(b), amending CWA section 301(h)(3): This section states that the scope of monitoring under section 301(h) is to be limited to only those scientific investigations necessary to study the effects of the applicant's proposed discharge. The specific monitoring programs to be implemented by individual applicants are developed on a case-by-case basis.

The requirements for monitoring programs under the existing regulations are in fact already generally focused on the effects of the applicant's discharge (*see, e.g.*, § 125.63(b), which provides that the program shall be adequate to evaluate the impact of the discharge on marine biota, and § 125.63(a)(1)(iv), which provides that the frequency and extent of monitoring programs should be determined after taking into account the nature of the discharge and potential impacts on receiving waters; see also § 125.63(a)(1)). However, to make this new statutory limitation an explicit requirement, EPA proposes adding this limitation to § 125.63 of the regulations. As in the past, the rationale for and scope of 301(h) monitoring programs will be discussed in the 301(h) decision document and supporting record for each permit decision.

WQA section 303(c), amending CWA section 301(h)(6): This amendment adds a new requirement, the urban area pretreatment program, to section 301(h). This requirement applies only to POTWs serving a population of 50,000 or more, and only with respect to toxic pollutants introduced by industrial dischargers. Under this provision, each such applicant must demonstrate, for each toxic pollutant introduced by an industrial discharger, that it either (1) has an "applicable pretreatment requirement" in effect or (2) has in effect a program that achieves "secondary removal equivalency," as described further below. This new statutory requirement complements the toxics control program requirements contained in the existing section 301(h) regulations (§ 125.66).

Section 301(h)(6) as amended also requires POTWs to demonstrate that industrial sources are in compliance with all of their pretreatment requirements, including numerical standards set by local limits, and that those requirements will be enforced. This part of section 301(h)(6) complements the existing requirement in section 301(h)(5) for applicants to demonstrate that all applicable pretreatment requirements for sources introducing waste into a POTW will be enforced.

The requirement for POTWs to demonstrate that industrial sources "are in compliance" with all pretreatment requirements will not necessarily require a demonstration that 100 percent of industrial sources are in compliance. For urban area POTWs with significant numbers of industrial users, at any given

time, it is likely that at least one or more of those users will be out of compliance. Adopting an interpretation requiring 100 percent compliance would be impractical and could effectively prohibit 301(h) waiver availability for large POTWs.

Instead, EPA believs it is appropriate to consider, on a case-by-case basis, the number and nature of the noncompliances. It is reasonable not to deny modifications to POTWs that are diligently implementing a pretreatment program merely because there is an insubstantial degree of noncompliance with pretreatment requirements by industrial users. Instead, EPA will exercise discretion in determining the significance of the noncompliances and will examine the measures the POTW is taking to assure compliance and implement an effective pretreatment program. This interpretation is consistent with the directives in a Senate Report on an earlier version of the bill (see S. Rep. No. 1128, 99th Cong., 1st Sess. 14 (1985)).

To implement these new requirements, EPA proposes to add § 125.65 to the regulations and to add or revise certain definitions in § 125.58. The term "toxic pollutant" is defined in the existing 301(h) regulations (§ 125.58.(aa)), and today's proposal would not change that definition. As a result, under that definition, the requirements of proposed § 125.65 would apply to the 126 priority pollutants listed in 40 CFR 401.15. In addition, proposed § 125.65(a)(2) clarifies the relationship of the toxics control requirements contained in proposed § 125.65 and the existing general pretreatment requirements in 40 CFR part 403. This provision makes clear that the requirements of proposed § 125.65 are to apply in addition to any applicable pretreatment requirements contained in 40 CFR part 403. Nothing in proposed § 125.65 is intended to waive or relax the 40 CFR part 403 requirements.

1. Applicable Pretreatment Requirement in Effect

The first manner in which an applicant may satisfy proposed § 125.65 is to show that there is an "applicable pretreatment requirement" in effect for a toxic pollutant. Applicable pretreatment requirements may take the form of federal categorical pretreatment standards promulgated by EPA under section 307 of the Act, local limits developed in accordance with 40 CFR part 403, or a combination of both.

A combination of both types of pretreatment standards will often be required in order to satisfy section 301(h)(6) as a collective "applicable pretreatment requirement." Categorical standards and local limits are distinct and complementary types of pretreatment standards. Categorical standards are nationally uniform, technology-based limits developed for specific industries. In contrast, under 40 CFR part 403, POTWs must develop local limits for all industrial sources as necessary to prevent interference and pass-through and to implement the specific prohibitions of 40 CFR 403.5(b). Under today's proposal, POTWs may also need to develop local limits to ensure that the requirements of § 125.62 are satisfied (see proposed § 125.65(c)). Thus, the existence of categorical standards that cover certain industrial dischargers does not relieve a POTW of any obligation it may have to develop local limits for those industrial dischargers or others. In addition, where an industrial discharger is subject to both a categorical standard and a local limit, the more stringent of the two limits applies.

Moreover, to qualify as an "applicable pretreatment requirement," a requirement or set of requirements must apply to *all* industrial dischargers introducing the toxic pollutant into the POTW. A toxic pollutant often may be introduced by several industrial sources, some of which are subject to a categorical standard for that pollutant, and some of which are not. In such cases, in order to show that there is an "applicable pretreatment requirement" in effect, applicants would need to develop local limits to ensure that all industrial users introducing the toxic pollutant into the POTW are subject to applicable pretreatment requirements.

In light of the above, EPA proposes to define an "applicable pretreatment requirement" for a toxic pollutant as one that consists of the following two elements (§ 125.65(c)): (a) As to each industrial discharger to the applicant's treatment works for which there is no applicable categorical pretreatment standard for the toxic pollutant, a local limit or limits on the toxic pollutant satisfying the requirements of 40 CFR part 403 and ensuring that the requirements of § 125.62 will be met; and (b) as to each industrial discharger to the applicant's treatment works that is covered by a categorical pretreatment standard for the toxic pollutant, the categorical standard plus a local limit or limits as necessary to satisfy 40 CFR part 403 and § 125.62. Put another way, EPA will find that there is an "applicable pretreatment requirement" for a toxic pollutant in satisfaction of section 301(h)(6) only under the following conditions: First, for each industrial discharger that is not covered by a categorical pretreatment standard for that pollutant, there must in all cases be a local limit on the pollutant approved by EPA pursuant to the requirements of 40 CFR part 403 and the requirements of § 125.62; second, even for facilities that are subject to a categorical standard for the pollutant, there must be an EPA approved local limit on the pollutant which satisfies 40 CFR part 403 and § 125.62.

In addition, POTWs seeking to demonstrate that they have an applicable pretreatment requirement in effect for a particular toxic pollutant by relying on local limits for that pollutant must demonstate that the local limits are adequate and enforceable. Under proposed § 125.65(c)(2), EPA may require local limits to be revised where necessary to satisfy the requirements of both 40 CFR part 403 and § 125.62. EPA refers applicants to the technical guidance document issued by EPA in December, 1987 for the purposes of 40 CFR part 403 (U.S. Environmental Protection Agency Office of Water Enforcement and Permits, Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program, December 1987, 355 pp.). As to the requirements of § 125.62, EPA's review of a 301(h) application might reveal, for example, that more stringent pretreatment is necessary to assure protection of a balanced indigenous population of fish, shellfish, and wildlife under § 125.62(c). Similarly, under proposed § 125.62(a), 301(h) applicants must demonstrate that applicable water quality standards or EPA water quality criteria, as appropriate, will be met at and beyond the boundary of the Zone of Initial Dilution (ZID) under critical environmental and treatment plant conditions. Section 301(h) modified permits held by POTWs will contain effluent limits based on these and other requirements; in turn, each POTW must demonstrate that there are local pretreatment requirements in place that will allow it to meet those permit limits. These requirements are subject to approval by the Administrator as part of the 301(h) review process.

2. Secondary Removal Equivalency

The second manner in which an applicant may satisfy proposed § 125.65 is to demonstrate that the combination of its own treatment plus pretreatment by industrial dischargers achieves "secondary removal equivalency." Applicants must make this demonstration whenever they cannot show that a toxic pollutant introduced

by an industrial discharger is subject to an "applicable pretreatment requirement" in effect.

This proposed regulatory provision is intended to implement the new requirement in section 301(h)(6) that, where there is no applicable pretreatment requirement in effect for a toxic pollutant, applicants must demonstrate that they have in effect the following:

> [A] pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant.

EPA has termed this the "secondary removal equivalency" requirement, and proposes to add the definition of that term in § 125.58(w).

Secondary treatment is intended to control conventional, non-toxic pollutants (40 CFR part 133). However, where secondary treatment is applied, a certain amount of the toxic pollutants in the wastewater is also removed. In essence, this part of section 301(h)(6) requires a program that achieves the same amount of toxic pollutant removal (considering both the pretreatment and the applicant's own treatment at below secondary levels) as would be achieved if the applicant were to apply secondary treatment and there were no pretreatment requirements covering the pollutant.

Under today's proposal, to demonstrate secondary removal equivalency, an applicant would need to use a secondary treatment pilot plant. By diverting part of its influent to the pilot plant, the applicant would empirically determine the incremental amount of a toxic pollutant that would be removed from the influent if the applicant were to apply secondary treatment. The applicant would then demonstrate to EPA that it has a pretreatment program in effect which, in combination with its own treatment processes, ensures at least that amount of toxic pollutant removal from the POTW's discharge. This demonstration would likely require the POTW either to install additional treatment, or to develop or revise local pretreatment limits.

More specifically, for "secondary removal equivalency," the statute requires a showing that the amount of a toxic pollutant removed by the applicant's existing treatment plus its pretreatment program is equivalent to the amount of that pollutant that would be removed if the applicant were to apply secondary treatment and if the applicant had no pretreatment program at all with respect to the pollutant. This can be represented as follows:

> POTW existing treatment + industrial pretreatment = POTW existing treatment *upgraded* to secondary treatment + no industrial pretreatment

EPA recognizes, however, that it would be much simpler for applicants to perform this empirical demonstration by using a pilot plant to apply secondary treatment to the applicant's regular influent—*i.e.*, influent that has already received industrial pretreatment in accordance with the requirements of 40 CFR part 403. This approach would alter the above showing as follows:

> POTW existing treatment + industrial pretreatment *upgraded* to secondary treatment = POTW existing treatment + *industrial pretreatment*

EPA has determined that the empirical demonstration of secondary removal equivalency using influent that has received industrial pretreatment would be conservative—*i.e.*, it would overstate the amount of toxic pollutant that would be removed by applying secondary treatment, as compared with an empirical demonstration using influent that has not received industrial pretreatment, since the demonstration takes into account the toxic pollutants removed through the industrial pretreatment program. Therefore, under today's proposal, to demonstrate secondary removal equivalency using the pilot plant approach, the applicant is permitted to make that demonstration (although it need not) by using influent that has received industrial pretreatment (see proposed § 125.58(w)—definition of "Secondary Removal Equivalency").

EPA refers commentors to the Amended Technical Support Document, which is located in the public record for this rulemaking, and provides guidance and illustrations on the methods that may be used to make the demonstration of Secondary Removal Equivalency.

WQA section 303(d), adding CWA section 301(h)(9): This section of the WQA adds new language to 301(h) providing that at the time the waiver becomes effective, the applicant must be discharging effluent that has received at least primary or equivalent treatment and that meets EPA water quality criteria after initial mixing. In addition to requiring an applicant to demonstrate that its discharged effluent has received primary or equivalent treatment, § 125.60 would also require applicants to monitor to ensure compliance with this treatment requirement based on the monthly average results of the monitoring. To implement the primary or equivalent treatment provision, EPA proposes to add § 125.60 to regulations.

WQA section 303(d) defines primary or equivalent treatment as "treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding [BOD] material and of the suspended solids [SS] in the treatment works influent, and disinfection, where appropriate." In light of WQA section 303(d), EPA believes that a definition of "primary or equivalent treatment" is necessary, and proposes to define this term in § 125.58(q) exactly as it is defined in the WQA.

EPA believes that the terms "sedimentation" and "skimming" include a range of treatment techniques. For example, these techniques would include coagulation and precipitation (physical adjuncts to sedimentation), and flotation and subsequent removal by skimming. These techniques would be adequate forms of treatment under section 303(d) and today's proposed regulations (§§ 125.58(r) and 125.60) as long as they satisfy the stated conditions for no less than 30 percent BOD and SS removal.

WQA section 303(d) also requires (in new CWA section 301(h)(9)), at the time the wavier becomes effective, that discharges meet water quality criteria estabished by EPA under CWA section 304(a)(1) of the Act after initial mixing in the waters surrounding or adjacent to the point of discharge. In general, CWA section 304(a) criteria serve only as guidance to the States. States may base their development of water quality standards on the 304(a) criteria as modified to reflect site-specific conditions or on other scientifically defensible methods (see 40 CFR 131.11(b)). In addition, water quality standards are subject to EPA approval, and are approved by EPA notwithstanding differences with the 304(a)(1) criteria where they are deemed appropriate with respect to local conditions.

Accordingly, EPA believes that Congressional intent behind this part of section 301(h)(9) will best be satisfied if the applicant demonstrates compliance with directly corresponding numerical water quality standards, instead of section 304(a)(1) criteria, where such an EPA-approved numerical standard exists for a pollutant. If there is no directly corresponding numerical water quality standard with respect to a pollutant, then applicants would need to demonstrate compliance with the 304(a)(1) criteria. For example, in some cases there is a numerical water quality standard for a group of chemicals, such

as total toxic metals, and there is a 304(a)(1) criterion for a specific inorganic chemical, such as cadmium. The applicant would be required to meet the 304(a)(1) criterion for cadmium since it refers to a specific chemical rather than to a group of chemicals. Thus, applicants would need to demonstrate compliance with the 304(a)(1) criterion, not the water quality standard.

This approach is adopted today in proposed § 125.62(a)(1) (i) and (ii). In addition, proposed § 125.62(a)(1)(iii) makes it clear that the requirements in § 125.62 to meet water quality standards or criteria apply in addition to any requirements to meet water quality standards in § 125.61 and that these new requirements do not waive or substitute for requirements in § 125.61. If the requirements of the two sections differ, the more stringent would apply.

EPA believes that Congress did not intend to deny 301(h) waivers in cases where numerical water quality standards have been adopted and approved by EPA as replacements for the 304(a)(1) criteria and the applicant demonstrates compliance with those standards at the boundary of the ZID. Instead, Congress appears to have added the requirement in section 301(h)(9) to ensure at least a general level of protection embodied in EPA's water quality criteria in cases where a full range of water quality standards corresponding to those criteria have not been adopted. Therefore, compliance with an EPA-approved numerical water quality standard for a particular pollutant is sufficient under today's proposal, regardless of whether the standard is more or less stringent than the corresponding criterion under section 304(a)(1).

The section 304(a)(1) criteria for the protection of aquatic life, and human health for non-carcinogenic pollutants, recommend numeric values for ambient levels of the pollutant in many, but not all, cases (e.g., specific maximum or 24-hour average concentration levels). EPA believes that these numeric values, where specified, are the levels that section 301(h) applicants should be required to meet to satisfy the statutory requirements to "meet" the section 304(a)(1) criteria. In cases where a section 304(a)(1) criterion for the protection of aquatic life or for the protection of human health for non-carcinogenic pollutants does not recommend a numeric level, there is no section 304(a)(1) criterion for the applicant to "meet," and the applicant would not be required to do so. Accordingly, under today's proposed rule, an applicant "meets" the section 304(a)(1) criteria for aquatic life and human health for non-carcinogenic pollutants where it meets the recommended values, if any, specified in the section 304(a)(1) criteria for ambient levels of the pollutant.

In the case of carcinogens, EPA's section 304(a)(1) human health criteria for carcinogenic pollutants recommend a concentration of zero for the maximum protection of human health. The section 304(a)(1) criteria documents for carcinogens also present information on the range of pollutant concentrations that correspond to incremental cancer risks of 10^{-5}, 10^{-6}, and 10^{-7} (i.e., one additional case of cancer over a lifetime in a population of one hundred thousand, one million, and ten million) at specified exposure patterns.

Because a zero level is essentially unattainable, under section 303 of the CWA EPA has approved numeric State water quality criteria for carcinogens that correspond to acceptable risk ranges above zero. If there is such an EPA-approved numeric State water quality standard for a particular pollutant, then as previously discussed, a demonstration of compliance with that standard would be sufficient. See, proposed § 125.62(a)(1)(i).

However, in the absence of an EPA-approved numeric State water quality standard or translator procedure for a particular pollutant, it will be necessary for applicants to demonstrate compliance with the applicable section 304(a)(1) criteria. See, proposed § 125.62(a)(1)(ii). Given that the level of zero recommended in the EPA criteria for carcinogenic pollutants is essentially unattainable, EPA will determine an appropriate non-zero level of risk in this circumstance by considering all relevant information. EPA will then use the section 304(a)(1) criteria documents, supplemented by other relevant information, to determine the specific pollutant concentration that corresponds to the selected risk level.

In selecting a risk levels for purposes of this regulation, EPA will consider whether there are EPA-approved State water quality standards in the particular State for other carcinogenic pollutants that generally reflect a single risk level employed by the State in its water quality standards for exposure to carcinogens. If the State has consistently employed such a single risk level in establishing its water quality standards, EPA will use this risk level as the one on which to base numeric limitations for the carcinogenic pollutant in question. The applicant would need to meet these limitations to show that it "meets the (section 304(a)(1)) criteria" for the particular carcinogen.

While EPA will consider whether the State's water quality standards for other carcinogenic pollutants reflect a level of exposure consistently corresponding to a single risk level, the risk levels for the various carcinogens need not all be exactly the same. For example, it may be that the State has a number of EPA-approved standards that correspond to a level of 1×10^{-5}, and one standard that corresponds to a level of 1.5×10^{-5}. In that case, EPA could determine that there is a single risk level consistently employed by the State, and the agency would apply that risk level with respect to setting limitations on the carcinogen in question. On the other hand, if a State has several EPA-approved water quality standards that correspond to widely varying risk levels (*e.g.*, 10^{-4} in some cases, and 10^{-6} in others) EPA would determine that there is no single risk level consistently employed by the State.

Under the Agency's water quality standards program, States are currently required to develop numeric criteria for the priority pollutants (see section 303(c)(2)(B) of the Clean Water Act). EPA therefore expects that many or most of the coastal states will have one or more EPA-approved water quality standards for carcinogenic pollutants by the time the Agency promulgates today's rule in final form, or shortly thereafter.

As a proposed alternative to a risk level based on a consistent State policy, the applicant may, at its option, work with the State to have the State recommend a particular risk level based on a demonstration that the recommended level is acceptable. The State would bear the burden of justifying the recommended risk level; *i.e.*, the State would need to explain the basis upon which it believes that the recommended level will assure the protection of human health. EPA would consider this recommendation but in all cases EPA will make the final determination of which risk level is acceptable.

The State's recommendation must demonstrate to the satisfaction of the Administrator, that the recommended level is sufficiently protective of human health in light of the exposure and uncertainty factors associated with the estimate of the actual risk posed by the applicant's discharge. Exposure factors would include, for example, local patterns of fish consumption, cumulative effects of multiple contaminants, and local population sensitivities. Factors related to uncertainty would include, for example, the weight of scientific

evidence concerning exposures and health effects and the reliability of exposure data.

The State's demonstration should be supported by sufficient documentation to allow EPA to judge the scientific soundness of the demonstration. The State must also show that it has held a public hearing to review the selection of the risk level, in accordance with provisions of State law and public participation requirements of 40 CFR part 25, and has considered the comments received pursuant to the hearing. EPA's intent is that the public participation process should be substantially similar to that required at 40 CFR part 130 for the establishment of State water quality standards. The State would also need to show that its recommendation is based on the best information available. EPA will consider these and other pertinent health and risk factors to complete an overall judgment on acceptability.

In summary, under today's proposal EPA will first determine if there is an EPA-approved State water quality standard that directly corresponds to the EPA section 304(a)(1) criterion for the carcinogenic pollutant under consideration. Under proposed § 125.62(a)(1)(iii), an EPA-approved State water quality standard would be deemed to "directly correspond" if (1) the State water quality standard addresses the same pollutant as EPA's water quality criterion and (2) the State water quality standard specifies a numeric criterion for that pollutant or objective methodology for deriving such a pollutant-specific criterion. EPA would apply this directly corresponding State standard where available. Absent such a State standard, EPA will consider all relevant information in determining the pollutant concentration that represents an acceptable level of risk. This information would include evidence that the State has consistently used a single risk level when establishing EPA-approved water quality standards. In the absence of such a consistent State policy, EPA will also consider a State recommendation of a risk level if the State demonstrates to the satisfaction of the Administrator that the particular risk level is justified. The State demonstration would need to account for the relevant exposure and uncertainty factors, show adequate public participation in the selection of the risk level, and show that use of the identified risk level is sufficiently protective of human health.

In cases where there is no consistent State policy or satisfactory State demonstration on which to base a risk level, EPA has decided not to set a specific risk level (*e.g.*, 10^{-6}) in today's proposal that applicants would need to meet (either presumptively, or in all cases). Instead, in such instances, EPA will select an acceptable risk level based on the circumstances of each case. EPA requests comment, however, on whether these regulations should specify the risk level that applicants would need to meet in such cases, and if so, what that level should be and the basis for that level.

EPA recognizes that section 301(h)(9) could be read to require compliance with 304(a) criteria in all cases, regardless of whether a standard exists that is better tailored to site-specific conditions. Supporting this reading of compliance with 304(a) criteria in all cases is the recognition that EPA water quality criteria and water quality standards may differ, yet Congress specifically referred only to the former in section 301(h)(9). Therefore, for proposed § 125.62(a), EPA considered the alternative of requiring strict compliance with 304(a) criteria in all cases, but rejected this alternative for the above reasons. EPA specifically requests comment, however, on this part of today's proposal.

EPA is interpreting "after initial mixing in the waters surrounding or adjacent to the point at which (the) effluent is discharged" to mean at the boundary of the ZID (proposed § 125.62(a)(1)). The ZID is defined in the existing regulations as "the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards" (§ 125.58(cc)). Under today's proposal, the applicant's diffuser must be located and designed so as to provide adequate initial dilution, dispersion, and transport of wastewater to meet water quality standards or criteria, as applicable, at and beyond the boundary of the ZID under critical environmental and treatment plant conditions (see proposed § 125.62(a)). This is consistent with EPA's existing practice as reflected in the Technical Support Document, which recommends that compliance with water quality criteria under critical conditions be determined at and beyond the boundary of the ZID.

In light of the new section 301(h)(9) requirements, today's proposal also requires the applicant to provide, as part of its monitoring program, data for evaluating compliance with applicable water quality standards or criteria, as applicable § 125.63(c)(1)).

WQA section 303(e), amending section 301(h): The purposes of this section are (1) to require applicants to take into account plume recirculation and re-entrainment of previously discharged effluent when determining compliance with water quality standards or criteria, and with the other 301(h) criteria, and (2) to prohibit permits that would allow discharges into the New York Bight Apex and all stressed saline estuarine waters. This new recirculation requirement applies to ocean as well as estuarine waters.

For all applicants WQA section 303(e) calls for a determination of whether the dilution waters contain "significant amounts" of previously discharged effluent from the treatment works. Section 125.62(a)(1) currently requires that the applicant's diffuser be located and designed so as to provide initial dilution, dispersion and transport sufficient to ensure that all applicable water quality standards are met at and beyond the ZID boundary under critical environmental and treatment plant conditions. Where all water quality standards are met, EPA believes that the dilution water does not contain significant amounts of previously discharged effluent from the treatment works. That is, EPA views the current regulatory requirement to provide adequate initial dilution at the ZID boundary to be a sufficient criterion for ensuring that "significant amounts" of previously discharged effluent are not entrained. This is consistent with the statement in the Report by the Conference Committee regarding this statutory amendment that the reference to water supplying dilution does not include those waters immediately surrounding the point at which the effluent is discharged in which initial mixing occurs. See Conf. Rep. No. 99–1004, 99th Cong., 2d Sess. at 119 (1986). Therefore, EPA has not proposed any changes to the regulations, although changes to the questionnaire (incorporated into the regulations as an appendix) have been proposed to reflect this WQA provision.

In addition, EPA is proposing changes to the TSD to revise the location of monitoring stations used to determine compliance with water quality standards or water quality criteria, as appropriate. These sampling location changes have been proposed to ensure that ambient conditions are not impacted by the previously discharged effluent of the POTW.

EPA proposes to add the WQA section 303(e) provision on stressed saline estuaries to the prohibitions listed in § 125.59 (see proposed § 125.59(b)(4)).

This provision would ban, without exception, all permit waivers for discharges into stressed estuaries. This provision would not, however, affect any current 301(h) applicants for new or renewed permits because no applicants are currently discharging into stressed estuaries. To ensure that 301(h) permittees will not discharge into estuaries that have become stressed, EPA will evaluate the condition of affected saline estuaries when reviewing applications for permit renewal.

WQA section 303(e) makes clear that discharges into stressed estuarine waters are prohibited in all cases, without regard to whether the stressed conditions are caused by the applicant's discharge. Section 125.62(f) of the regulations, however, currently allows discharges into stressed estuarine waters where an applicant demonstrates that it will not contribute to the stressed conditions. This allowance must be eliminated in light of the blanket prohibition of WQA 303(e). Therefore, in today's action, EPA proposes to limit the scope of § 125.62(f) by making it applicable only to stressed ocean waters (thereby excluding estuarine waters).

WQA section 303(f), amending CWA section 301(j)(1)(a):: This section allows POTWs that had contracted prior to December 31, 1982 to use outfalls of section 301(h) POTWs, to apply for their own 301(h) modification within 30 days of enactment of the WQA. This section was intended to allow the Irvine Ranch District in California to apply for a modified 301(h) permit. However, no POTW applied under this section within 30 days of WQA enactment. Therefore, there is no need to revise the regulations to reflect WQA section 303(f).

WQA section 303(g): This section exempts applicants that received tentative or final approvals of 301(h) modified permits prior to the date of WQA enactment from meeting certain requirements of the WQA until the time of permit renewal. Today's proposal adds these "grandfathering" exemptions in new § 125.59(j). Specifically, this section exempts grandfathered applicants from meeting the requirements of §§ 125.59 (b)(4) and (b)(5), 125.60, and 125.65 until the time of permit renewal. In addition, EPA believes that applicants may need up to two years from the promulgation of these regulations in any event to come into compliance with the latter two provisions (*i.e.*, §§ 125.60 (primary or equivalent treatment) and 125.65 (urban area pretreatment program)). Therefore, § 125.59(j) would allow applicants additional time as deemed appropriate on a case-by-case basis, but not to exceed this two-year period, to meet these two requirements in cases where permit renewal will occur before the end of the two-year period.

While WQA section 303(g) also extended grandfathering protection to other parts of WQA section 303, these provisions are not accounted for in proposed § 125.59(j). Specifically, WQA section 303(g) also applies to section 303(a) (applicant's discharge must be evaluated "alone or in combination" with those of other sources) and the first part of section 303(e) (dilution water must not contain "significant amounts of previously discharged effluent"). As explained above, however, these two provisions are already effectively included in the existing section 301(h) regulations. Therefore, EPA has determined that there is no reason to include these two provisions of WQA section 303 in the proposed regulation concerning grandfathering.

EPA believes that the purpose of this "grandfather" provision is to avoid the need to reopen a decision already approved or near approval at the time of WQA enactment. In some cases, EPA may have initially granted a tentative approval, but, in light of new information, may have subsequently withdrawn that tentative approval or issued a tentative denial prior to enactment of the WQA. In other cases, prior to enactment of the WQA, applicants withdrew applications that EPA had tentatively approved. EPA considers such applications not to have been near approval at the time of WQA enactment. Therefore, under proposed § 125.59(j), they may not take advantage of the WQA section 303(g) grandfather provisions.

Other requirements: Under today's proposal, applicants must demonstrate compliance with all of the part 125, subpart G requirements before EPA will issue a final section 301(h) modified permit (see proposed § 125.59(i)(1)). Where an applicant has not demonstrated such compliance, however, but is making a good faith effort to come into compliance, EPA may tentatively approve a permit modification based upon a schedule that the applicant must meet with respect to the outstanding requirements (see proposed § 125.59(h)). With respect to the new requirements in §§ 125.60 (primary or equivalent treatment) and 125.65 (urban area pretreatment program), EPA will grant in no case more than two years to achieve compliance (see proposed § 125.59(f)(3)(ii)) (except for grandfathered applicants, as described above). This provision for tentative approvals is consistent with existing regulations in part 125, subpart G and 40 CFR part 122 and will allow flexibility in EPA's 301(h) permit modification decisions in cases where applicants have met some, but not all, of the 301(h) regulatory requirements and are using reasonable, good faith means to come into compliance with the remaining requirements.

EPA considered an alternative approach of not making tentative decisions available in cases where an applicant has not satisfied the new requirements of §§ 125.60 and 125.65.

Under this approach, after promulgation of today's regulations, the Agency would make final decisions on waiver applications based upon whether the applicant is in full compliance with all of the existing and new regulatory requirements in part 125, subpart G.

The Agency determined that this approach should not be adopted. It would result in denials of waiver applications in cases in which applicants justifiably need more time to meet the new regulatory requirements. These denials would lead to the imposition of secondary treatment requirements pursuant to schedules extending well beyond the additional time that would have been needed to meet the new 301(h) requirements. Instead, the strategy adopted in today's proposal would allow additional time before a final EPA decision for applicants who are making good faith efforts to comply, but would set reasonable limits on the additional time allowed.

EPA seeks comments on the approach in today's proposal regarding the time period for demonstrating compliance. In particular, the Agency seeks comments on whether the approach of allowing up to two years to come into compliance with §§ 125.60 and 125.65 is appropriate, or whether it would be more appropriate to allow a shorter time or, conversely, an extension of the two-year period for good cause.

EPA has also added a sentence to § 125.59(f)(4) stating that a failure to submit the required State certifications under §§ 125.61(b)(2) and 125.64(b) will be grounds for denial of an application. This does not represent a change to the regulatory scheme but has been added simply to make explicit EPA's existing authority to deny applications on this basis.

EPA also proposes to add a requirement in § 125.59(e) that permittees and applicants, including those that have been grandfathered under WQA section 303(g), must submit

to the Administrator within 90 days of the effective date of these regulatory revisions additional information regarding their intention to demonstrate compliance with the new requirements under §§ 125.60 and 125.65 upon permit renewal. If necessary, the Administrator may reopen such permits to insert schedules, ensuring that these new requirements will be met upon permit renewal.

III. Section-By-Section Analysis

In addition to the above changes, at various other places in the regulations, as explained below, EPA proposes language to clarify requirements for permit renewal.

Section 125.56: This section establishes the general scope and purpose of the regulations. This section remains unchanged.

Section 125.57: This section sets forth the statutory language applicable to section 301(h) modified permits, including the statutory amendments enacted on December 29, 1981 (Pub. L. 97–117) and on February 4, 1987 (Pub. L. 100–4).

Section 125.58: This section sets forth the definitions applicable to the Subpart G regulations. As a result of Section 303 of the WQA, definitions of primary or equivalent treatment, pretreatment, categorical pretreatment standard, secondary removal equivalency, water quality criteria, permittee, and New York Bight Apex have been added. The definition of industrial source has been revised to include the term "industrial discharger" which appears in section 303(c) of the WQA. As explained in the 1979 regulations, waters landward of the baseline were included in recognition of indentations in the coast which were considered to be marine waters but were still inside the baseline. EPA proposes to amend the term "ocean waters" to clarify that ocean waters are distinct from saline estuarine waters, since saline estuaries are subject to specific additional regulatory criteria not applicable to oceans. The definition of application has been modified to include applications for permit renewal. The definition of application questionnaire has been changed to reflect the combining of the questionnaires for small and large applicants.

Section 125.59: This section describes the general requirements applicable to 301(h) applications, including filing deadlines and procedures, procedures for revising applications, and procedures for State determinations. Several changes to this section reflecting the new statutory requirements are proposed. EPA has also added procedures for permit renewal, and for submitting additional information (specifically, letters of intent and project plans, including schedules) to demonstrate compliance with the urban area pretreatment program and primary or equivalent treatment requirements in order to ensure that timely implementation of the requirements is accomplished.

Section 125.60: This new section requires an applicant's discharge to have received at least primary or equivalent treatment (section 303(d) of the WQA).

Section 125.61: This section requires an applicant to demonstrate that there is a water quality standard for the pollutant for which the modification is requested. The section also requires that the applicant obtain a certification from the state which documents that the modified discharge will comply with applicable provisions of state law, including state water quality standards. No changes are proposed to this section.

Section 125.62: This section implements section 301(h)(2) of the CWA, and contains requirements to ensure the attainment or maintenance of water quality. The stressed waters subsection (§ 125.62(f)) has been modified by adding the word "ocean" to stressed waters, thereby complementing proposed § 125.59(b)(5), which prohibits discharges into stressed estuarine waters under any conditions. EPA proposes to amend § 125.62(a)(1) to provide that applicants must meet EPA water quality criteria established under section 304(a)(1) of the Act, or EPA-approved numerical water quality standards where such standards directly correspond to 304(a)(1) water quality criteria.

Section 125.63: This section outlines the general requirements for monitoring programs required under section 301(h)(3) of the CWA. In response to section 303(b) of the WQA, EPA proposes adding language to restrict the required scope of the 301(h) monitoring program. EPA is also proposing that applicants monitor their discharges to ensure compliance with water quality criteria (if applicable under proposed § 125.62(a)), in addition to water quality standards, as part of the applicants' monitoring programs.

Section 125.64: This section contains criteria related to the impacts of the modified discharge on other point and nonpoint sources and implements section 301(h)(4) of the CWA. This section remains unchanged.

Section 125.65: This proposed new section sets forth the urban pretreatment program requirements of section 303(c) of the WQA.

These new requirements are discussed in section II of the preamble.

Section 125.66: This section includes the criteria for a control program of toxic pollutants and pesticides, and implements sections 301(h)(5) and (h)(6) (in part) of the CWA. To update compliance deadlines, EPA is proposing a minor change (see proposed § 125.66 (c)(1)) in reference to deadlines by which applicants were required to develop approved pretreatment programs.

Section 125.67: This section discusses the criteria related to increased discharges and implements section 301(h)(7) of the CWA. This section remains unchanged.

Section 125.68: This section sets forth special permit conditions to be included in 301(h) modified NPDES permits. No changes to these requirements have been made.

Application questionnaires: There are currently two mandatory questionnaires, one each for small and large applicants, in the Appendices to the section 301(h) regulations. EPA is today proposing to require all applicants, regardless of size, to complete one combined questionnaire. This single questionnaire has been developed, based on EPA's 301(h) program experience, to clarify responses from all applicants and facilitate EPA's review as to whether the applicant's modified discharge meets the criteria of section 301(h) and the subpart G regulations. Information requested by EPA in the questionnaire has changed in response to new WQA requirements. The questionnaire is still in two sections, a general information and basic requirements section (part II) and a technical evaluation section (part III).

IV. Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

A. Executive Order 12291

Under section 3(b) of Executive Order 12291, the agency must judge whether a regulation is major and thus subject to the requirements of a Regulatory Impact Analysis. The proposed regulation published today is not major because the rule will not result in an annual effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation and will not significantly disrupt domestic or export markets. Therefore, the agency has not prepared a Regulatory Impact Analysis under the Executive Order. EPA has submitted this regulation to the Office of Management

and Budget (OMB) for review as required by Executive Order 12291.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 138) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–2706.

The average annual burden hours for the collection information is approximately 1,006 hours per POTW respondent, and 120 hours per state respondent. Of that, the incremental burden from these regulatory changes is approximately 192 hours per small facility, and 256 hours per large facility, and 40 hours per state respondent. These estimates include the time for POTWs to collect additional information to comply with this proposed rule, to conduct monitoring and toxics control activities, and to prepare an application for permit renewal; and time for states to prepare the state determinations and certifications.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden by February 25, 1991, to Chief, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), federal agencies must, when developing regulations, consider their impact on small entities (small businesses, small government jurisdictions, and small organizations). To evaluate whether this proposed rule will have a significant economic impact on a substantial number of small entities, the Agency has prepared an EIA. The Agency has concluded, based on the EIA, that this rule as proposed would not have a significant impact on a substantial number of small entities because it will not create significant economic impacts and will affect only a small number of applicants/permittees.

There are 66 current applicants or permittees in the 301(h) permit program. Out of these 66 applicants or permittees, only ten are both subject to the primary or equivalent treatment requirements and meet the Small Business Administration (SBA) definition of a small entity (having a service area population of less than 50,000). All those applicants or permittees subject to the urban area pretreatment requirements and one of the permittees subject to the primary or equivalent treatment requirements have service area populations of greater than 50,000, and thus are not small entities. The SBA considers twenty percent to be a substantial number of small entities. The ten small entities represent only about fifteen per cent of the total current applicants or permittees in the 301(h) permit program. Therefore, this proposed rule does not affect a substantial number of small entities.

On a national level, the total estimated capital cost of meeting the primary or equivalent treatment requirements for the ten small entities amounts to a little more than $13 million with an associated operations and maintenance cost of $565,000 per year. Assuming a 20 year repayment schedule, the total annualized cost, for the ten small entities, equals approximately $870,000 a year. After compliance with the primary or equivalent treatment requirements, the total annual sewer fee for these ten small entities is less than one percent of the community's median household income. Consequently, none of the small entities affected by this rule are expected to incur significant economic impacts.

In summary, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 125

Water pollution controls, Waste treatment and disposal.

Dated January 11, 1991.

F. Henry Habicht,

Acting Administrator.

For the reasons set out in the preamble, part 125 of title 40 of the Code of Federal Regulations are amended as set forth below.

Note: For clarity, EPA has set forth below Part 125, subpart G in its entirety as it would look after incorporation of the amendments in today's proposal. However, EPA is requesting comments only on the portions of these regulations that the Agency is proposing to amend in today's notice. Although the existing portions of subpart G that EPA is not proposing to amend are also set forth below, EPA is not reconsidering those portions and they are not subject to comment as part of this proposed rulemaking.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

40 CFR part 125 is amended as follows:

1. The authority citation for subpart G of part 125 continues to read as follows:

Authority: Clean Water Act Sections 301, 304, 501, Pub. L. 92–508, 86 Stat. 816, as amended by Pub. L. 95–217, 91 Stat. 1566, as amended by, Pub. L. 97–117, 95 Stat. 1623, as amended by Pub. L. 100–4, 101 Stat. 29–37.

2. 40 CFR part 125, subpart G is revised to read as follows:

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

Sec.

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

§ 125.56 Scope and purpose.

This subpart establishes the criteria to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a section 301(h) modification of the secondary treatment ("section 301(h) modified permit").

§ 125.57 Law governing issuance of a section 301(h) modified permit.

(a) Section 301(h) of the Clean Water Act provides that:

The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of and pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) The discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and protection of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) The applicant has established a system of monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable; and the scope of such monitoring is limited to include only those investigations necessary to study the effects of the proposed discharge;

(4) Such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) All applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) In the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) To the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit.

(9) The applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of this Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection, the phrase "the discharge of any pollutant into marine waters" refers to waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(b) Section 301(j)(1) of the Clean Water Act provides that:

Any application filed under this section for a modification of the provisions of—

(A) Subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981; except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h), may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Act of 1987.

(c) Section 22(e) of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Public L. 97–117, provides that:

The amendments made by this section shall take effect on the date of enactment of this Act except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act shall receive such permit during the one-year period which begins on the date of enactment of this Act.

(d) Section 303(b)(2) of the Water Quality Act, Pub. L. 100–4, provides that:

301(h)(3) shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act.

(e) Section 303(g) of the Water Quality Act provides that:

The amendments made to 301(h) and (h)(2), as well as provisions of (h)(6) and (h)(9), shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act; except that such amendments shall apply to all renewals of such permits after such date of enactment.

§ 125.58 Definitions.

For the purposes of this subpart:

(a) *Administrator* means the EPA Administrator or a person designated by the EPA Administrator.

(b) *Altered discharge* means any discharge other than a current discharge or improved discharge, as defined in this regulation.

(c) *Applicant* means an applicant for a new or renewed section 301(h) modified permit. Large applicants have populations contributing to their POTWs equal to or more than 50,000 people or average dry weather flows of 5.0 millions gallons per day (mgd) or more; shall applicants have contributing populations of less than 50,000 people and average dry weather flows of less than 5.0 mgd. For the purposes of this definition the contributing population and flows shall be based on projections for the end of the five year permit term. Average dry weather flows shall be the average daily total discharge flows for the maximum month of the dry weather season.

(d) *Application* means a final application previously submitted in

accordance with the June 15, 1979, section 301(h) regulations (44 FR 34784); an application submitted between December 29, 1981 and December 29, 1982; or a 301(h) renewal application submitted in accordance with these regulations. It does not include a preliminary application submitted in accordance with the June 15, 1979, section 301(h) regulations.

(e) *Application questionnaire* means EPA's "Applicant Questionnaire for Modification of Secondary Treatment Requirements", published as an appendix to this subpart.

(f) *Balanced, indigenous population* means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed.

(g) *Categorical pretreatment standard* means a standard promulgated by EPA under 40 CFR chapter I, subchapter N.

(h) *Current discharge* means the volume, composition, and location of an applicant's discharge at the time of permit application.

(i) *Improved discharge* means the volume, composition and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements to treatment levels or discharge or characteristics; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system or to eliminate or control the introduction of pollutants into the applicant's treatment works.

(j) *Industrial discharger* or *industrial source* means any source of nondomestic pollutants regulated under section 307(b) or (c) of the Clean Water Act which discharges into a POTW.

(k) *Modified discharge* means the volume, composition, and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested. A modified discharge may be a current discharge, improved discharge, or altered discharge.

(l) *New York Bight Apex* means the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(m) *Nonindustrial source* means any source of pollutants which is not an industrial source.

(n) *Ocean waters* means those coastal waters other than saline estuarine waters landward of the baseline of the territorial seas, the deep waters of the territorial seas, or the waters of the contiguous zone.

(o) *Permittee* means an NPDES permittee with an effective 301(h) modified permit.

(p) *Pesticides* means demeton, guthion, malathion, mirex, methoxychlor, and parathion.

(q) *Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 40 CFR part 403.

(r) *Primary or equivalent treatment* for the purposes of this subpart means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.

(s) *Public water supplies* means water distributed from a public water system.

(t) *Public water system* means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. This term includes (1) Any collection, treatment, storage and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(u) *Publicly owned treatment works* or "POTW" means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality, or intermunicipal or interstate agency.

(v) *Saline estuarine waters* means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(w) *Secondary removal equivalency* means that the amount of a toxic pollutant removed by the combination of the applicant's own treatment of its influent and pretreatment by its industrial users is equal to or greater than the amount of the toxic pollutant that would be removed if the applicant were to apply secondary treatment to its discharge where the discharge has not undergone pretreatment by the applicant's industrial users.

(x) *Secondary treatment* means the term as defined in 40 CFR part 133.

(y) *Shellfish, fish and wildlife* means any biological population or community that might be adversely affected by the applicant's modified discharge.

(z) *Stressed waters* means those ocean waters which an applicant can demonstrate to the satisfaction of the Administrator, that the absence of a balanced, indigenous population is caused solely by human perturbations other than the applicant's modified discharge.

(aa) *Toxic pollutants* means those substances listed in 40 CFR 401.15.

(bb) *Water quality criteria* means scientific data and guidance developed and periodically updated by EPA under section 304(a)(1) of the Clean Water Act, which are applicable to marine waters.

(cc) *Water quality standards* means applicable water quality standards which have been approved, left in effect, or promulgated under section 303 of the Clean Water Act.

(dd) *Zone of initial dilution* (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

§ 125.59 General.

(a) *Basis for application.* An application under this subpart shall be based on a current, improved, or altered discharge into ocean waters or saline estuarine waters.

(b) *Prohibitions.* No section 301(h) modified permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this subpart and part 122;

(2) For the discharge of sewage sludge;

(3) Where such issuance would conflict with applicable provisions of State, local, or other Federal laws or Executive Orders. This includes compliance with the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*; the Endangered Species Act of 1973, as amended, 16

U.S.C. 1531 *et seq.* and title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*;

(4) Where the discharge of any pollutant enters into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed dishcarge; or

(5) Where the discharge of any pollutant is into the New York Bight Apex.

(c) *Applications.* Each applicant for a modified permit under this subpart shall submit an application to EPA signed in compliance with 40 CFR part 122 subpart B which shall contain:

(1) A signed, completed NPDES Application Standard form A, parts I, II, III;

(2) A completed Application Questionnaire;

(3) The certification in accordance with 40 CFR 122.22(d);

(4) In addition to the requirements of § 125.59(c)(1)–(3), applicants for permit renewal shall support continuation of the modification by supplying to EPA, the results of studies and monitoring performed in accordance with § 125.63 during the life of the permit. Upon a demonstration meeting the statutory criteria and requirements of this subpart, the permit may be renewed under the applicable procedures of 40 CFR part 124.

(d) *Revisions to applications.* (1) POTWs which submitted applications in accordance with the June 15, 1979, Regulations (44 FR 34784) may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(f)(2)(i); and

(2) Other applicants may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(f)(2)(i). Revisions by such applicants which propose downgrading treatment levels and/or outfall and diffuser location and design must be justified on the basis of substantial changes in circumstances beyond the applicant's control since the time of application submission.

(3) Applicants authorized or requested to submit additional information under § 125.59(g) may submit a revised application in accordance with § 125.59(f)(2)(ii) where such additional information supports changes in proposed treatment levels and/or outfall location and diffuser design. The opportunity for such revision shall be in addition to the one-time revision allowed under § 125.59(d) (1) and (2).

(4) POTWs which revise their applications must:

(i) Modify their NPDES form and Application Questionnaire as needed to assure that the information filed with their application is correct and complete;

(ii) Provide additional analysis and data as needed to demonstrate compliance with this subpart;

(iii) Obtain new State determinations under §§ 125.61(b)(2) and 125.64(b); and

(iv) Provide the certification described in paragraph (c)(3) of this subsection.

(5) Applications for permit renewals may not be revised.

(e) *Submittal of additional information to demonstrate compliance with §§ 125.60 and 125.65.* (1) On or before the deadline established in paragraph (f)(3) of this section, applicants shall submit a letter of intent to demonstrate compliance with §§ 125.60 and 125.65. The letter of intent is subject to approval by the Administrator based on the requirements of this paragraph and paragraph (f)(3) of this section. The letter of intent shall consist of the following:

(i) For compliance with § 125.60:

(A) A description of the proposed treatment system which upgrades treatment to satisfy the requirements of § 125.60.

(B) A project plan, including a schedule for data collection and for achieving compliance with § 125.60. The project plan shall include dates for design and construction of necessary facilities, submittal of influent/effluent data and submittal of any other information necessary to demonstrate compliance with § 125.60. The Administrator will review the project plan and may require revisions prior to authorizing submission of the additional information.

(ii) For compliance with § 125.65:

(A) A determination of what approach will be used to achieve compliance with § 125.65.

(B) A project plan for achieving compliance. The project plan shall include any necessary data collection activities, submittal of additional information, and/or development of appropriate pretreatment limits to demonstrate compliance with § 125.65. The Administrator will review the project plan and may require revisions prior to submission of the additional information.

(iii) POTWs which submit additional information must:

(A) Modify their NPDES form and Application Questionnaire as needed to assure that the information filed with their application is correct and complete;

(B) Obtain new State determinations under §§ 125.61(b)(2) and 125.64(b); and

(C) Provide the certification described in paragraph (c)(3) of this section.

(2) The information required under this subsection must be submitted in accordance with the schedules in § 125.59(f)(3)(ii). If the applicant does not meet these schedules for compliance, EPA may deny the application on that basis.

(f) *Deadlines and distribution*—(1) *Applications.*

(i) The application for an original 301(h) permit for POTWs which directly discharge effluent into saline waters shall be submitted to the appropriate EPA Regional Administrator no later than December 29, 1982.

(ii) The application for renewal of a 301(h) modified permit shall be submitted no less than 180 days prior to the expiration of the existing permit, unless permission for a later date has been granted by the Administrator. (The Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(iii) A copy of the application shall be provided to the State and interstate agency(s) authorized to provide certification/concurrence under §§ 124.53–124.55 on or before the date the application is submitted to EPA.

(2) *Revisions to Applications.* (i) Applicants desiring to revise their applications under § 125.59(d) (1) or (2) must:

(A) Submit to the appropriate Regional Administrator a letter of intent to revise their application either within 45 days of the date of EPA's tentative decision on their original application, or within 45 days of November 26, 1982, whichever is later. Following receipt by EPA of a letter of intent, further EPA proceedings on the tentative decision under 40 CFR part 124 will be stayed.

(B) Submit the revised application as described for new applications in § 125.59(f)(1) either within one year of the date of EPA's tentative decision on

the original application or within one year of November 26, 1982, if a tentative decision has already been made, whichever is later.

(ii) Applicants desiring to revise their applications under § 125.59(d)(3) must submit the revised application as described for new applications in § 125.59(f)(1) of this part concurrent with submission of the additional information under § 125.59(g).

(3) Deadline for additional information to demonstrate compliance with § 125.60 and § 125.65.

(i) A letter of intent required under § 125.59(e)(1) must be submitted by the following dates: for permittees with 301(h) modifications or for applicants as to which a tentative or final decision has been issued, within 90 days of promulgation of this provision; for all others, within 90 days after the Administrator issues a tentative decision on an application. Following receipt by EPA of a letter of intent containing the information required in § 125.59(e)(1), further EPA proceedings on the tentative decision under 40 CFR part 124 will be stayed.

(ii) The project plan submitted under § 125.59(e)(1) shall ensure that the applicant meets all the requirements of §§ 125.60 and 125.65 by the following deadlines:

(A) Within two years of promulgation of this subsection for applicants that are not grandfathered under § 125.59(j).

(B) At the time of permit renewal or within two years of promulgation of this subsection, whichever is later, for applicants that are grandfathered under § 125.59(j).

(4) *State determination deadline.* State determinations, as required by §§ 125.61(b)(2) and 125.64(b) shall be filed by the applicant with the appropriate Regional Administrator, no later than 90 days after submission of the revision to the application or additional information to EPA. Extensions to this deadline may be provided by EPA upon request. However, EPA will not begin review of the revision to the application or additional information until a favorable State determination is received by EPA. Failure to provide the State determination within the timeframe required by this subsection is a basis for denial of the application.

(g)(1) The Administrator may authorize or request an applicant to submit additional information by a specified date not to exceed one year from the date of authorization or request.

(2) Applicants seeking authorization to submit additional information on current/modified discharge characteristics, water quality, biological conditions or oceanographic characteristics must:

(i) Demonstrate that they made a diligent effort to provide such information with their application and were unable to do so, and

(ii) Submit a plan of study, including a schedule for data collection and submittal of the additional information. EPA will review the plan of study and may require revisions prior to authorizing submission of the additional information.

(h) *Tentative decisions on section 301(h) modifications.* The Administrator shall grant a tentative approval or a tentative denial of a section 301(h) modified permit application. To qualify for a tentative approval, the applicant shall demonstrate to the satisfaction of the Administrator that it is using good faith means to come into compliance with all the requirements of this subpart and that it will meet all such requirements based on a schedule approved by the Administrator in accordance with § 125.59(f)(3)(ii).

(i) *Decisions on section 301(h) modifications.* (1) The decision to grant or deny a section 301(h) modification shall be made by the Administrator and shall be based on the applicant's demonstration that it has met all the requirements of §§ 125.59 through 125.68.

(2) No section 301(h) modified permit shall be issued until the appropriate State certificate/concurrence is granted or waived pursuant to § 124.54 or if the State denies certification/concurrence pursuant to § 124.54.

(3) In the case of a modification issued to an applicant in a State administering an approved permit program under 40 CFR part 123 the State Director may:

(i) Revoke an existing permit as of the effective date of the EPA issued section 301(h) modified permit, and

(ii) Cosign the section 301(h) modified permit if the Director has indicated an intent to do so in the written concurrence.

(4) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in 40 CFR part 124, except that, because section 301(h) permits may only be issued by EPA, the terms "Administrator or a person designated by the Administrator" shall be substituted for the term "Director" as appropriate; and

(ii) Contain all applicable terms and conditions set forth in 40 CFR part 122 and § 125.68.

(5) Appeals of section 301(h) determinations shall be governed by the procedures in 40 CFR part 124.

(j) *Grandfathering provision.* Applicants that received tentative or final approval for a section 301(h) modified permit prior to February 4, 1987, are not subject to § 125.60, the water quality criteria provisions of § 125.62(a)(1), or § 125.65 until the time of permit renewal. In addition, if permit renewal will occur prior to two years after promulgation of this subsection, applicants may have additional time to come into compliance with §§ 125.60 and 125.65, as determined appropriate by EPA on a case-by-case basis. Such additional time, however, shall not extend beyond the date that is two years after promulgation of this subsection. This subsection does not apply to any application that was initially tentatively approved, but as to which EPA withdrew its tentative approval or issued a tentative denial prior to February 4, 1987.

§ 125.60 Primary or equivalent treatment requirements.

(a) The applicant shall demonstrate that, at the time its modification becomes effective, it will be discharging effluent that has received at least primary or equivalent treatment.

(b) The applicant shall perform monitoring to ensure, based on the monthly average results of the monitoring, that the effluent it discharges has received primary or equivalent treatment.

§ 125.61 Existence of and compliance with applicable water quality standards.

(a) There must exist a water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) Water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) Water quality standards for suspended solids, turbidity, light transmission, light scattering or maintenance of the euphotic-zone; and

(3) Water quality standards for pH.

(b) The applicant must:

(1) Demonstrate that the modified discharge will comply with the above water quality standard(s); and

(2) Provide a determination signed by the State or interstate agency(s) authorized to provide certification under §§ 124.53 and 124.54 that the proposed modified discharge will comply with applicable provisions of State law including water quality standards. This determination shall include a discussion of the basis for the conclusion reached.

§ 125.62 Attainment or maintenance of water quality which assures protection of water supplies, and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities.

(a) *Physical characteristics of discharge.* (1) At the time the 301(h) modification becomes effective, the applicant's outfall and diffuser must be located and designed to provide adequate initial dilution, dispersion, and transport of wastewater such that the discharge does not exceed at and beyond the zone of initial dilution:

(i) All applicable EPA approved State water quality standards that directly correspond to EPA water quality criteria, and;

(ii) All applicable EPA water quality criteria for pollutants for which there is no applicable EPA approved State water quality standard directly corresponding to the EPA water quality criterion for the pollutant.

(iii) For purposes of paragraphs (a)(1)(i) and (ii) of this section, a State water quality standard "directly corresponds" to an EPA water quality criterion only if (A) the State water quality standard addresses the same pollutant as the EPA water quality criterion and (B) the State water quality standard specifies a numeric criterion for that pollutant or State objective methodology for deriving such a numeric criterion.

(iv) The evaluation of compliance with paragraphs (a)(1)(i) and (ii) of this section shall be based upon conditions reflecting periods of maximum stratification and during other periods when discharge characteristics, water quality, biological seasons, or oceanographic conditions indicate more critical situations may exist.

(2) The evaluation under paragraph (a)(1)(ii) of this section as to compliance with applicable section 304(a)(1) water quality criteria shall be based on the following:

(i) *For aquatic life criteria:* The pollutant concentrations that must not be exceeded are the numeric ambient values, if any, specified in the EPA section 304(a)(1) water quality criteria documents as the concentrations at which acute and chronic toxicity to aquatic life occurs or that are otherwise identified as the criteria to protect aquatic life.

(ii) *For human health criteria for carcinogens:* (A) For a known or suspected carcinogen, the Administrator shall determine the pollutant concentration that shall not be exceeded. To make this determination, the Administrator shall first determine a level of risk associated with the pollutant that is acceptable for purposes of this subsection. The Administrator shall then use the information in the section 304(a)(1) water quality criterion document, supplemented by all other relevant information, to determine the specific pollutant concentration that corresponds to the identified risk level.

(B) For purposes of paragraph (a)(2)(ii)(A) of this section; an acceptable risk level will be a single level that has been consistently used, as determined by the Administrator, as the basis of the State's EPA-approved State water quality standards for carcinogenic pollutants. Alternatively, the Administrator may consider a recommendation by the State of an acceptable risk level, which may be submitted at the applicant's option. The State recommendation must demonstrate, to the satisfaction of the Administrator, that the recommended level is sufficiently protective of human health in light of the exposure and uncertainty factors associated with the estimate of the actual risk posed by the applicant's discharge. The State must include with its demonstration a showing that the risk level selected is based on the best information available and that the State has held a public hearing to review the selection of the risk level, in accordance with provisions of State law and public participation requirements of 40 CFR part 25. If the Administrator neither determines that there is a consistently used single risk level nor accepts a risk level recommended by the State, then the Administrator shall otherwise determine an acceptable risk level based on all relevant information.

(iii) *For human health criteria for non-carcinogens:* For non-carcinogenic pollutants, the pollutant concentrations that must not be exceeded are the numeric ambient values, if any, specified in the EPA section 304(a)(1) water quality criteria documents as protective against the potential toxicity of the contaminant through ingestion of contaminated aquatic organisms.

(3) The requirements of paragraphs (a)(1) and (a)(2) of this section apply in addition to, and do not waive or substitute for the requirements of § 125.61.

(b) *Impact of discharge on public water supplies.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(2) The applicant's modified discharge must not:

(i) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or

(ii) Have the effect of requiring treatment over and above that which would be necessary in the absence of such discharge in order to comply with local, and EPA drinking water standards.

(c) *Biological impact of discharge.* (1) The applicants modified discharge must allow for the attainment or maintenance of water quality which assures protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(2) A balanced indigenous population of shellfish, fish, and wildlife must exist:

(i) Immediately beyond the zone of initial dilution of the applicant's modified discharge and;

(ii) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(3) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenter, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution.

(4) In addition, for modified discharges into saline estuarine water:

(i) Benthic populations within the zone of initial dilution must not differ substantially from the balanced indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(ii) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(iii) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(d) *Impact of discharge on recreational activities.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing, and picnicking, and sports activities along shorelines and beaches.

(2) There must be no Federal, State or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(e) *Additional requirements for applications based on improved or altered discharges.* An application for a section 301(h) modified permit on the basis of an improved or altered discharge must include:

(1) A demonstration that such improvements or alterations have been thoroughly planned and studied and can be completed or implemented expeditiously;

(2) Detailed analyses projecting changes in average and maximum monthly flow rates and composition of the applicant's discharge which are expected to result from proposed improvements or alterations;

(3) The assessments required by paragraphs (a) through (b) of this section based on its current discharge;

(4) A detailed analysis of how the applicant's planned improvements or alterations will comply with the requirements of paragraphs (a) through (d) of this section.

(f) *Stressed waters.* An applicant must demonstrate compliance with paragraphs (a) through (e) of this section not only on the basis of the applicant's own modified discharge, but also taking into account the applicant's modified discharge in combination with pollutants from other sources. However, if an applicant which discharges into ocean waters believes that its failure to meet the requirements of paragraphs (a) through (e) of this section is entirely attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff and the applicant's previous discharges), the applicant need not demonstrate compliance with those requirements if it demonstrates, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other source increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other source decreases.

§ 125.63 Establishment of a monitoring program.

(a) *General requirements.* (1) The applicant must:

(i) Have a monitoring program that is (A) Designed to provide data to evaluate the impact of the modified discharge on the marine biota, demonstrate compliance with applicable water quality standards, and measure toxic substances in the discharge, and (B) limited to include only those scientific investigations necessary to study the effects of the proposed discharge;

(ii) Describe the sampling techniques, schedules and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used in the monitoring program;

(iii) Demonstrate that it has the resources necessary to implement the program upon issuance of the modified permit and to carry it out for the life of the modified permit; and

(iv) Determine the frequency and extent of the monitoring program taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and potentially significant impacts on receiving water quality, marine biota, and designated water uses.

(2) The Administrator may require revision of the proposed monitoring program before issuing a modified permit and during the term of any modified permit.

(b) *Biological monitoring program.* The biological monitoring program for both small and large applicants shall provide data adequate to evaluate the impact of the modified discharge on the marine biota.

(1) Biological monitoring shall include to the extent practicable:

(i) Periodic surveys of the biological communities and populations which are most likely affected by the discharge to enable comparisons with baseline conditions described in the application and verified by sampling at the control stations/reference sites during the periodic surveys;

(ii) Periodic determinations of the accumulation of toxic pollutants and pesticides in organisms and examination of adverse effects, such as disease, growth abnormalities, physiological stress or death;

(iii) Sampling of sediments in areas of solids deposition in the vicinity of the ZID, in other areas of expected impact, and at appropriate reference sites to support the water quality and biological surveys and to measure the accumulation of toxic pollutants and pesticides; and

(iv) Where the discharge would affect commercial or recreational fisheries, periodic assessments of the conditions and productivity of fisheries.

(2) Small applicants are not subject to the requirements of paragraphs (b)(1)(ii)–(iv) of this section if they discharge at depths greater than 10 meters and can demonstrate through a suspended solids deposition analysis that there will be negligible seabed accumulation in the vicinity of the modified discharge.

(3) For applicants seeking a section 301(h) modified permit based on:

(i) A current discharge, biological monitoring shall be designed to demonstrate ongoing compliance with the requirements of § 125.62(c);

(ii) An improved discharge or altered discharge other than outfall relocation, biological monitoring shall provide baseline data on the current impact of the discharge and data which demonstrate, upon completion of improvements or alterations, that the requirements of § 125.62(c) are met; or

(iii) An improved or altered discharge involving outfall relocation, the biological monitoring shall:

(A) Include the current discharge site until such discharge ceases; and

(B) Provide baseline data at the relocation site to demonstrate the impact of the discharge and to provide that basis for demonstrating that requirements of § 125.62(c) will be met.

(c) *Water quality monitoring program.* The water quality monitoring program shall to the extent practicable:

(1) Provided adequate data for evaluating compliance with water quality standards or water quality criteria, as applicable under § 125.62(a)(1);

(2) Measure the presence of toxic pollutants which have been identified or reasonably may be expected to be present in the discharge.

(d) *Effluent monitoring program.* In addition to the requirements of 40 CFR part 122, to the extent practicable, monitoring of the POTW effluent shall provide quantitative and qualitative data which measure toxic substances and pesticides in the effluent and the effectiveness of the toxic control program.

§ 125.64 Effect of the discharge on other point and nonpoint sources.

(a) No modified discharge may result in any additional pollution control requirements on any other point or nonpoint source.

(b) The applicant shall obtain a determination from the State or interstate agency(s) having authority to establish wasteload allocations indicating whether the applicant's discharge will result in an additional treatment pollution control, or other requirement on any other point or nonpoint sources. The state determination shall include a discussion of the basis for its conclusion.

§ 125.65 Urban area pretreatment program.

(a) *Scope and applicability.* (1) The requirements of this section apply to each POTW serving a population of 50,000 or more that has toxic pollutants introduced into the POTW by one or more industrial dischargers and that seeks a section 301(h) modification.

(2) The requirements of this section apply in addition to any applicable requirements of 40 CFR part 403, and do not waive or substitute for the part 403 requirements in any way.

(b) *Toxic pollutant control.* (1) As to each toxic pollutant introduced by an industrial discharger, each POTW subject to the requirements of this section shall demonstrate that it either:

(i) Has an applicable pretreatment requirement in effect in accordance with paragraph (c) of this section; or (ii) has in effect a program that achieves Secondary Removal Equivalency in accordance with paragraph (d) of this section.

(2) Each applicant shall demonstrate that sources introducing waste into the applicant's treatment works are in compliance with all applicable pretreatment requirements, including numerical standards set by local limits, and that it will enforce those requirements.

(c) *Applicable pretreatment requirement.* (1) An applicable pretreatment requirement under paragraph (b)(1)(i) of this section with respect to a toxic pollutant shall consist of the following:

(i) As to each industrial source discharging to the applicant's treatment works for which there is no applicable categorical pretreatment standard for the toxic pollutant, a local limit or limits on the toxic pollutant satisfying the requirements of 40 CFR part 403 and ensuring that the requirements of § 125.62 are met; and

(ii) As to each industrial source discharging to the applicant's treatment works that is subject to a categorical pretreatment standard for the toxic pollutant, the categorical standard plus a local limit or limits as necessary to satisfy the requirements of 40 CFR part 403 and to ensure that the requirements of section 125.62 are met.

(2) Any local limits developed to meet the requirements of paragraphs (b)(1)(i) and (c)(1) of this section shall be (i) Consistent with all applicable requirements of 40 CFR part 403 and (ii) subject to approval by the Administrator as part of the 301(h) application review. The Administrator may require such local limits to be revised as necessary to meet the requirements of this section, § 125.62, or 40 CFR part 403.

(d) *Secondary removal equivalency.* An applicant shall demonstrate that it achieves Secondary Removal Equivalency through the use of a secondary treatment pilot (demonstration) plant at the applicant's facility which provides an empirical determination of the amount of a toxic pollutant removed by the application of secondary treatment to the applicant's influent, where the applicant's influent has not been pretreated. Alternatively, an applicant may make this determination using influent that has received industrial pretreatment, notwithstanding § 125.58(w).

§ 125.66 Toxics control program.

(a) *Chemical analysis.* (1) The applicant shall submit at the time of application a chemical analysis of its current discharge for all toxic pollutants and pesticides as defined in § 125.58 (aa) and (p). The analysis shall be performed on two 24 hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute chemical analyses if composition of the supplemental or substitute samples typifies that which occurs during dry and wet weather conditions.

(2) Unless required by the State, this requirement shall not apply to any small section 301(h) applicant which certifies that there are no known or suspected sources of toxic pollutants or pesticides and documents the certification with an industrial user survey as described by 40 CFR 403.82(f)(2).

(b) *Identification of sources.* The applicant shall submit at the time of application an analysis of the known or suspected sources of toxic pollutants or pesticides identified in § 125.66(a). The applicant shall to the extent practicable categorize the sources according to industrial and nonindustrial types.

(c) *Industrial pretreatment requirements.* (1) An applicant that has known or suspected industrial sources of toxic pollutants shall have an approved pretreatment program in accordance with 40 CFR part 403.

(2) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants or pesticides and so certifies to the Administrator.

(3) The pretreatment program submitted by the applicant under this section shall be subject to revision as required by the Administrator prior to issuing or renewing any section 301(h) modified permit and during the term of any such permit.

(4) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(d) *Nonindustrial source control program.* (1) The applicant shall submit a proposed public education program designed to minimize the entrance of nonindustrial toxic pollutants and pesticides into its POTW(s) which shall be implemented no later than 18 months after issuance of a 301(h) modified permit.

(2) The applicant shall also develop and implement additional nonindustrial source control programs on the earliest possible schedule. This requirement shall not apply to a small applicant which certifies that there are no known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides in its discharge.

(3) The applicant's nonindustrial source control programs under paragraph (d)(2) of this section shall include the following schedules which are to be implemented no later than 18 months after issuance of a 301(h) modified permit:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants and pesticides; and

(ii) A schedule for the development and implementation of control programs, to the extent practicable, for nonindustrial sources of toxic pollutants and pesticides.

(4) Each proposed nonindustrial source control program and/or schedule submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing or renewing any section 301(h) modified permit and during the term of any such permit.

§ 125.67 Increase in effluent volume or amount of pollutants discharged.

(a) No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discharge specified in the section 301(h) modified permit.

(b) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged.

(c) The applicant shall provide projections of effluent volume and mass loadings for any pollutants to which the modification applies in 5 year increments for the design life of its facility.

§ 125.68 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR part 122, the following:

(a) Effluent limitations and mass loadings which will assure compliance with the requirements of this subpart;

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.66(c);

(2) Nonindustrial toxics control program required by § 125.66(d); and

(3) Control of combined sewer overflows required by § 125.67.

(c) Monitoring program requirements that include:

(1) Biomonitoring requirements of § 125.63(b);

(2) Water quality requirements of § 125.63(c);

(3) Effluent monitoring requirements of § 125.60(b) and 125.63(d).

(d) Reporting requirements that include the results of the monitoring programs required by paragraph (c) of this section at such frequency as prescribed in the approved monitoring program.

Appendix—Applicant Questionnaire for Modification of Secondary Treatment Requirements

I. Introduction

This questionnaire is to be submitted by both small and large applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A small applicant is defined as a POTW that has a contributing population to its wastewater treatment facility of less than 50,000 and a projected average dry weather flow of less than 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) (40 CFR 125.58(c)). A large applicant is defined as a POTW that has a population contributing to its wastewater treatment facility of at least 50,000 or a projected average dry weather flow of its discharge of at least 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) (40 CFR 125.58(c)). The questionnaire is in two sections, a general information and basic requirements section (Part II) and a technical evaluation section (Part III). Satisfactory completion by small and large dischargers of the appropriate questions of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h) and EPA regulations (40 CFR part 125, subpart G).

Most small applicants should be able to complete the questionnaire using available information. However, small POTWs with low initial dilution discharging into shallow waters or waters with poor dispersion and transport characteristics, discharging near distinctive and susceptible biological habitats, or discharging substantial quantities of toxics should anticipate the need to collect additional information and/or conduct additional analyses to demonstrate compliance with section 301(h) criteria. If there are questions in this regard, applicants should contact the appropriate EPA Regional Office for guidance.

Guidance for responding to this questionnaire is provided by the newly amended section 301(h) technical support document. Where available information is incomplete and the applicant needs to collect additional data during the period it is preparing the application or a letter of intent, *EPA* encourages the applicant to consult with EPA prior to data collection and submission. Such consultation, particularly if the applicant provides a project plan, will help assure that the proper data are gathered in the most efficient manner.

The notation (L) means large applicants must respond to the question, and (S) means small applicants must respond.

II. General Information and Basic Data Requirements

A. Treatment System Description

1. (L, S) On which of the following are you basing your application: A current discharge, improved discharge, or altered discharge, as defined in 40 CFR 125.58? (40 CFR 125.59(a))

2. (L, S) Description of the Treatment/Outfall System. (40 CFR 125.62(a) and 125.62(e))

a. Provide detailed descriptions and diagrams of the treatment system and outfall configuration which you propose to satisfy the requirements of section 301(h) and 40 CFR part 125 subpart G. What is the total discharge design flow upon which this application is based?

b. Provide a map showing the geographic location of proposed outfall(s) (i.e., discharge). What is the latitude and longitude of the proposed outfall(s)?

c. For a modification based on an improved or altered discharge, provide a description and diagram of your current treatment system and outfall configuration. Include the current outfall's latitude and longitude, if different from the proposed outfall.

3. (L, S) Primary or equivalent treatment requirements. (40 CFR 125.60)

a. Provide data to demonstrate that your effluent meets at least primary or equivalent treatment requirements as defined in 40 CFR 125.58(r)? (40 CFR 125.60)

b. If your effluent does not meet the primary or equivalent treatment requirements, when do you plan to meet them? Provide a detailed schedule, including design, construction, start up and full operation, with your application. This requirement must be met by the effective date of the new section 301(h) modified permit.

4. (L,S) Effluent Limitations and Characteristics (40 CFR 125.61(b) and 125.62(e)(2))

a. Identify the final effluent limitations for five-day biochemical oxygen demand (BOD_5), suspended solids, and pH upon which you application for a modification is based:

—BOD_5 _____ mg/l

—Suspended solids _____ mg/l

—pH _____ (range)

b. Provide data on the following effluent characteristics for your current discharge as well as for the modified discharge if different from the current discharge:

Flow (m^3/sec):
—Minimum
—Average dry weather
—Average wet weather
—Maximum
—Annual average

BOD_5 (mg/l) for the following plant flows:
—Minimum
—Average dry weather
—Average wet weather
—Maximum
—Annual average

Suspended solids (mg/l) for the following plant flows:
—Minimum
—Average dry weather
—Average wet weather
—Maximum
—Annual average

Toxic pollutants and pesticides (μg/l):
—List each toxic pollutant and pesticide

pH:
—Minimum
—Maximum

Dissolved oxygen (mg/l, prior to chlorination) for the following plant flows:
—Minimum
—Average dry weather
—Average wet weather
—Maximum
—Annual average

Immediate dissolved oxygen demand (mg/l)

5. (L,S) Effluent Volume and Mass Emissions (40 CFR 125.62(e)(2) and 125.67)

a. Provide detailed analyses showing projections of effluent volume (annual average, m^3/sec) and mass loadings (mt/yr) of BOD_5 and suspended solids for the design life of your treatment facility in five year increments. If the application is based upon an improved or altered discharge, the projections must be provided with and without the proposed improvements or alterations.

b. Provide projections for the end of your five-year permit term for (1) the treatment facility contributing population and (2) the average daily total discharge flow for the maximum month of the dry weather season.

6. (L,S) Average Daily Industrial Flow (m^3/sec). Provide or estimate the average daily industrial inflow to your treatment facility for the same time increments as in question II.A.4 above. (40 CFR 125.66)

7. (L,S) Combined Sewer Overflows (40 CFR 125.67(b))

a. Does (will) your treatment and collection system include combined sewer overflows?

b. If yes, provide a description of your plan for minimizing combined sewer overflows to the receiving water.

8. (L,S) Outfall/Diffuser Design. Provide the following data for your current discharge as well as for the modified discharge, if different from the current discharge: (40 CFR 125.62(a)(1))

—Diameter and length of the outfall(s) (meters)

—Diameter and length of the diffuser(s) (meters)
—Angle(s) of port orientation(s) from horizontal (degrees)
—Port diameter(s) (meters)
—Orifice contraction coefficient(s), if known
—Vertical distance from mean lower low water (or mean low water) surface and outfall port(s) centerline (meters)
—Number of ports
—Port spacing (meters)
—Design flow rate for each port, if multiple ports are used (m^3/sec)

B. Receiving Water Description

1. (L,S) Are you applying for a modification based on a discharge to the ocean (40 CFR 125.58(n)) or to a saline estuary (40 CFR 125.58(v))? (40 CFR 125.59(a))

2. (L,S) Is your current discharge or modified discharge to stressed waters as defined in (40 CFR 125.58(z))? If yes, what are the pollution sources contributing to the stress? (40 CFR 125.59(b)(4) and 125.62(f))

3. (L,S) Provide a description and data on the seasonal circulation patterns in the vicinity of your current and modified discharge(s). (40 CFR 125.62(a))

4. (L) Oceanographic conditions in the vicinity of the current and proposed modified discharge(s). Provide data on the following: (40 CFR 125.62(a))
—Lowest ten percentile current speed (m/sec)
—Predominant current speed (m/sec) and direction (true) during the four seasons
—Period(s) of maximum stratification (months)
—Period(s) of natural upwelling events (duration and frequency, months)
—Density profiles during period(s) of maximum stratification

5. (L,S) Do the receiving waters for your discharge contain significant amounts of effluent previously discharged from the treatment works for which you are applying for a section 301(h) modified permit? (40 CFR 125.57(a)(3))

6. Ambient water quality conditions during the period(s) of maximum stratification: at the zone of initial dilution (ZID) boundary, at other areas of potential impact, and at control stations. (40 CFR 125.62(a))

a. (L) Provide profiles (with depth) on the following for the current discharge location and for the modified discharge location, if different from the current discharge:
—BOD_5 (mg/l)
—Dissolved oxygen (mg/l)
—Suspended solids (mg/l)
—pH
—Temperature (° C)
—Salinity (ppt)
—Transparency (turbidity, percent light transmittance)
—Other significant variables (e.g., nutrients, toxic pollutants and pesticides, fecal coliform bacteria)

b. (S) Provide available data on the following in the vicinity of the current discharge location and for the modified discharge location, if different from the current discharge: (40 CFR 125.61(b)(1))
—Dissolved oxygen (mg/l)
—Suspended solids (mg/l)
—pH
—Temperature (° C)
—Salinity (ppt)
—Transparency (turbidity, percent light transmittance)
—Other significant variables (e.g., nutrients, toxic pollutants and pesticides, fecal coliform bacteria)

c. (L, S) Are there other periods when receiving water quality conditions may be more critical than the period(s) of maximum stratification? If so, describe these and other critical periods and data requested in 6.a. for the other critical period(s). (40 CFR 125.62(a)(1))

7. (L) Provide data on steady state sediment dissolved oxygen demand and dissolved oxygen demand due to resuspension of sediments in the vicinity of your current and modified discharge(s) (mg/l/day).

C. Biological Conditions

1. (L) Provide a detailed description of representative biological communities (e.g., plankton, macrobenthos, demersal fish, etc.) in the vicinity of your current and modified discharge(s): Within the ZID, at the ZID boundary, at other areas of potential discharge-related impact, and at reference (control) sites. Community characteristics to be described shall include (but not be limited to) species composition; abundance; dominance and diversity; spatial/temporal distribution; growth and reproduction; disease frequency; trophic structure and productivity patterns; presence of opportunistic species; bioaccumulation of toxic materials, and the occurrence of mass mortalities.

2. (L, S) a. Are distinctive habitats of limited distribution (such as kelp beds or coral reefs) located in areas potentially affected by the modified discharge? (40 CFR 125.62(c))

(b) If yes, provide information on type, extent, and location of habitats.

3. (L, S) a. Are commercial or recreational fisheries located in areas potentially affected by the discharge? (40 CFR 125.62 (c) and (d))

b. If yes, provide information on types, location, and value of fisheries.

D. State and Federal Laws (40 CFR 125.61 and 125.62(a)(1))

1. (L, S) Are there water quality standards applicable to the following pollutants for which a modification is requested:
—Biochemical oxygen demand or dissolved oxygen?
—Suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone?
—pH of the receiving water?

2. (L, S) If yes, what is the water use classification for your discharge area? What are the applicable standards for your discharge area for each of the parameters for which a modification is requested? Provide a copy of all applicable water quality standards or a citation to where they can be found.

3. (L, S) If there are no directly corresponding numerical applicable water quality standards approved by EPA, provide data to demonstrate that water quality criteria established under section 304(a)(1) of the Clean Water Act are met at and beyond the boundary of the ZID under critical environmental and treatment plant conditions in the waters surrounding or adjacent to the point at which your effluent is discharged. (40 CFR 125.62(a)(1))

4. (L, S) Will the modified discharge: (40 CFR 125.59(b)(3))
—Be consistent with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act as amended, 16 U.S.C. 1451 et seq.? (See 16 U.S.C. 1456(c)(3)(A))
—Be located in a marine sanctuary designated under title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA) as amended, 16 U.S.C. 1431 et seq., or in an estuarine sanctuary designated under the Coastal Zone Management Act as amended, 16 U.S.C. 1461? If located in a marine sanctuary designated under title III of the MPRSA, attach a copy of any certification or permit required under regulations governing such marine sanctuary. (See 16 U.S.C. 1432(f)(2))
—Be consistent with the Endangered Species Act as amended, 16 U.S.C. 1531 et seq.? Provide the names of any threatened or endangered species that inhabit or obtain nutrients from waters that may be affected by the modified discharge. Identify any critical habitat that may be affected by the modified discharge and evaluate whether the modified discharge will affect threatened or endangered species or modify a critical habitat. (See 16 U.S.C. 1536(a)(2))

5. (L, S) Are you aware of any State or Federal laws or regulations (other than the Clean Water Act or the three statutes identified in item 4 above) or an Executive Order which is applicable to your discharge? If yes, provide sufficient information to demonstrate that your modified discharge will comply with such laws(s), regulation(s), or order(s). (40 CFR 125.59(b)(3))

III. Technical Evaluation

A. Physical Characteristics of Discharge (40 CFR 125.62(a))

1. (L, S) What is the critical initial dilution for your current and modified discharge(s) during (1) the period(s) of maximum stratification? and (2) any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. (L, S) What are the dimensions of the zone of initial dilution for your modified discharge(s)?

3. (L) What are the effects of ambient currents and stratification on dispersion and transport of the discharge plume/wastefield?

4. (S) Will there be significant sedimentation of suspended solids in the vicinity of the modified discharge?

5. (L) Sedimentation of suspended solids.

a. What fraction of the modified discharge's suspended solids will accumulate within the vicinity of the modified discharge?

b. What are the calculated area(s) and rate(s) of sediment accumulation within the vicinity of the modified discharge(s) (g/m^2/yr)?

c. What is the fate of settleable solids transported beyond the calculated sediment accumulation area?

B. Compliance With Applicable Water Quality Standards (40 CFR 125.61(b) and 125.62(a))

1. (L,S) What is the concentration of dissolved oxygen immediately following initial dilution for the period(s) of maximum stratification and any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. (L, S) What is the farfield dissolved oxygen depression and resulting concentration due to BOD exertion of the wastefield during the period(s) of maximum stratification and any other critical period(s)?

3. (L) What are the dissolved oxygen depressions and resulting concentrations near the bottom due to steady sediment demand and resuspension of sediments?

4. (L, S) What is the increase in receiving water suspended solids concentration immediately following initial dilution of the modified discharge(s)?

5. (L) What is the change in receiving water pH immediately following initial dilution of the modified discharge(s)?

6. (L, S) Does (will) the modified discharge comply with applicable water quality standards for:

—Dissolved oxygen?
—Suspended solids or surrogate standards?
—pH?

7. (L, S) Provide the determination required by 40 CFR 125.61(b)(2) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

C. Impact on Public Water Supplies (40 CFR 125.62(b))

1. (L, S) Is there a planned or existing public water supply (desalinization facility) intake in the vicinity of the current or modified discharge?

2. (L, S) If yes,

a. What is the location of the intake(s) (latitude and longitude)?

b. Will the modified discharge(s) prevent the use of intake(s) for public water supply?

c. Will the modified discharge(s) cause increased treatment requirements for public water supply(s) to meet local, state, and EPA drinking water standards?

D. Biological Impact of Discharge (40 CFR 125.62(c))

1. (L, S) Does (will) a balanced indigenous population of shellfish, fish, and wildlife exist:

—Immediately beyond the ZID of the current and modified discharge(s)?
—In all other areas beyond the ZID where marine life is actually or potentially affected by the current and modified discharge(s)?

2. (L, S) Have distinctive habitats of limited distribution been impacted adversely by the current discharge and will such habitats be impacted adversely by the modified discharge?

3. (L, S) Have commercial or recreational fisheries been impacted adversely by the current discharge (e.g., warnings, restrictions, closures, or mass mortalities) or will they be impacted adversely by the modified discharge?

4. (L) Does the current or modified discharge cause the following within or beyond the ZID (40 CFR 125.62(c)(3)):

—Mass mortality of fishes or invertebrates due to oxygen depletion, high concentrations of toxics, or other conditions?
—An increased incidence of disease in marine organisms?
—An abnormal body burden of any toxic material in marine organisms?
—Any other extreme, adverse biological impacts?

5. (L, S) for discharges into saline estuarine waters: (40 CFR 125.62(c)(4)).

—Does or will the current or modified discharge cause substantial differences in the benthic population within the ZID and beyond the ZID?
—Does or will the current or modified discharge interfere with migratory pathways within the ZID?
—Does or will the current or modified discharge result in bioaccumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within ZID?

No section 301(h) modified permit shall be issued where the discharge enters into stressed saline estuarine waters as stated in 40 CFR 125.59(b)(4).

6. (L, S) For improved discharges, will the proposed improved discharge(s) comply with the requirements of 40 CFR 125.62(a) through 125.62(d)? (40 CFR 125.62(e)).

7. (L, S) For altered discharge(s), will the altered discharge(s) comply with the requirements of 40 CFR 125.62(a) through 125.62(d)? (40 CFR 125.62(e))

8. (L, S) If your current discharge is to stressed ocean waters, does or will your current or modified discharge: (40 CFR 125.62(f)).

—Contribute to, increase, or perpetuate such stressed condition?
—Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases?
—Retard the recovery of the biota or water quality if human perturbation from other sources decreases?

E. Impacts of Discharge on Recreational Activities (40 CFR 125.62(d))

1. (L, S) Describe the existing or potential recreational activities likely to be affected by the modified discharge(s) beyond the zone of initial dilution.

2. (L, S) What are the existing and potential impacts of the modified discharge(s) on recreational activities? Your answer should include, but not be limited to, a discussion of fecal coliform bacteria.

3. (L, S) Are there any Federal, State, or local restrictions on recreational activities in the vicinity of the modified discharge(s)? If yes, describe the restrictions and provide citations to available references.

4. (L, S) If recreational restrictions exist, would such restrictions be lifted or modified if you were discharging a secondary treatment effluent?

F. Establishment of a Monitoring Program (40 CFR 125.63)

1. (L, S) Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.63. Only those scientific investigations that are necessary to study the effects of the proposed discharge should be included in the scope of the 301(h) monitoring program (40 CFR 125.63(a)(1)(i)(b)).

2. (L, S) Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

3. (L, S) Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. Effect of Discharge on Other Point and Nonpoint Sources (40 CFR 125.64)

1. (L, S) Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. (L, S) Provide the determination required by 40 CFR 125.64(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. Toxics Control Program (40 CFR 125.66)

1. a.(L, S) Do you have any known or suspected industrial sources of toxic pollutants or pesticides?

b.(L, S) If no, provide the certification required by 40 CFR 125.66(a)(2).

c.(L) If yes, provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides.

d.(L) Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in (1)(c) above.

2. (S)a. Are there any known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides from your modified discharge(s).

b. If no, provide the certification required by 40 CFR 125.66(d)(2) together with available supporting data.

c. If yes, provide a schedule for development and implementation of nonindustrial toxics control programs to meet the requirements of 40 CFR 126.66(d)(3).

3. (L, S *) Provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides as required by 40 CFR 125.66(a)(1).

4. (L, S *) Provide and analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in 2. above.

5. (L, S) Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.

b. If no, and if required by 40 CFR part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR part 403.

6. Urban area pretreatment requirement (40 CFR 125.65).

Dischargers serving a population of 50,000 or more must respond.

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* To the extent practicable.

a. Provide data on all toxic pollutants introduced into the treatment works from industrial sources (categorical and noncategorical).

b. Note whether applicable pretreatment requirements are in effect for every industrial source of each toxic pollutant. Are the industrial sources introducing such toxic pollutants in compliance with all of their pretreatment requirements? Are these pretreatment requirements being enforced? (40 CFR 125.65(b)(2))

c. If applicable pretreatment requirements do not exist for each toxic pollutant in the POTW effluent introduced by industrial sources,

—Provide a description and a schedule for your development and implementation of applicable pretreatment requirements (40 CFR 125.65(c)), or

—Describe how you propsoe to demonstrate secondary removal equivalency for each of those toxic pollutants, including a schedule for compliance, by using a secondary treatment pilot plant. (40 CFR 125.65(d))

7. (L, S) Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system. (40 CFR 125.66(d)(1)).

8. (L) Provide a schedule for development and implementation of a nonindustrial toxics control program to meet the requirements of 40 CFR 125.66(d)(3).

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H.J. Res. 77/Pub. L. 102-1

Authorization for Use of Military Force Against Iraq Resolution. (Jan. 14, 1991; 105 Stat. 3; 2 pages) Price: $1.00

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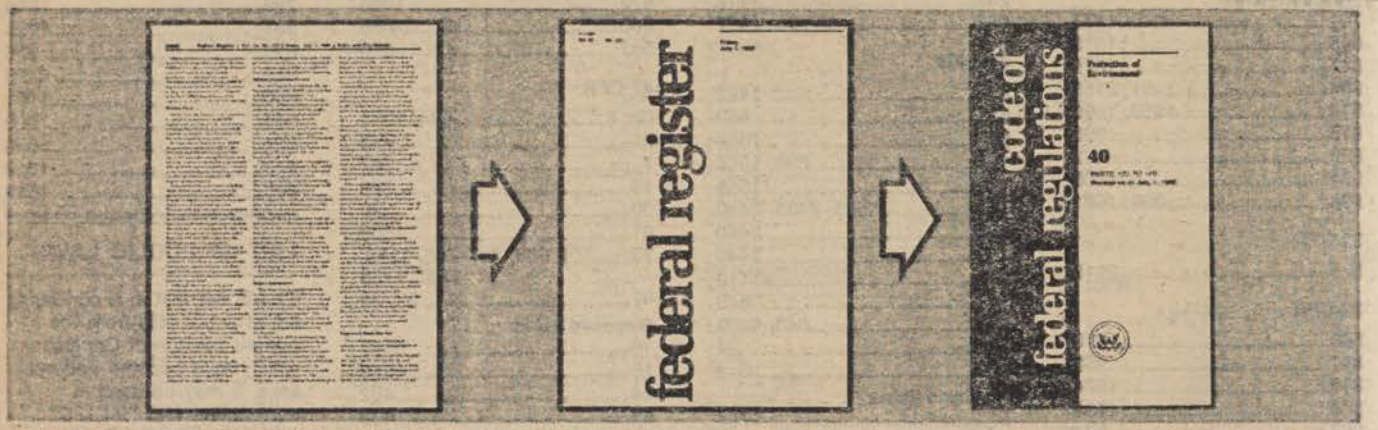

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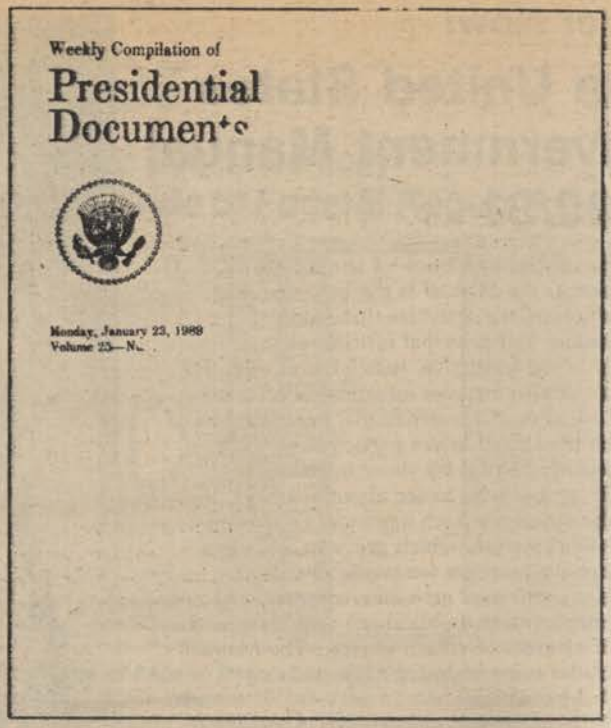

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2. _____
(Company or personal name)

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(Additional address/attention line)

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(Street address)

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(City, State, ZIP Code)

(_____)_____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

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(Signature) (Rev. 1-20-89)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371